



# FEDERAL ELECTION COMMISSION

Washington, DC 20463

## MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel *HCS*

DATE: August 2, 1999

SUBJECT: MUR 3774-General Counsel's Brief without  
cited documents

The attached is submitted as an Agenda document for the  
Commission Meeting of \_\_\_\_\_

Open Session \_\_\_\_\_

Closed Session \_\_\_\_\_

### CIRCULATIONS

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NON-SENSITIVE ☐

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ADVISORY OPINIONS ☐

REGULATIONS ☐

OTHER ☐

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

National Republican Senatorial Committee  
Stan Huckaby, as treasurer

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MUR 3774

GENERAL COUNSEL'S BRIEF

**I. STATEMENT OF THE CASE**

On August 1, 1995, the Commission found reason to believe that the National Republican Senatorial Committee and Stan Huckaby, as treasurer ("the NRSC") violated 2 U.S.C. §§ 441a(f) and 441b(a) and 11 C.F.R. § 102.5(a)(1)(i) by making payments of non-federal funds to three non-profit organizations to conduct get-out-the-vote ("GOTV") activities intended to benefit Republican candidates in targeted Senate races. The three non-profit organizations were the American Defense Foundation ("ADF"), the National Right to Life Committee ("NRLC") and the Coalitions for America ("CFA").<sup>1</sup> These non-federal payments were made, in most cases, after the NRSC had exhausted, or virtually exhausted, its own ability to support the same candidates under applicable contribution and coordinated expenditure limitations imposed by the Federal Election Campaign Act of 1971, as amended ("the Act"). The targeted races included the 1992 U.S. Senate elections in Idaho, North Carolina, South Carolina, Wisconsin, Ohio, and

<sup>1</sup> The NRSC also made a \$7,000 non-federal payment to a fourth organization during the relevant period: the Good Government Committee, an Alabama state political committee. Because of the small amount involved in that transaction, that payment is not included in this brief.

Oregon; the runoff election for the U.S. Senate in Georgia in 1992; the special and runoff elections for the U.S. Senate in Texas in 1993; and the general elections for the U.S. Senate in Minnesota and Pennsylvania in 1994.

The Commission's reason to believe findings in this matter were based on a legal presumption of coordination between a party and its candidates arising out of the Commission's prior interpretation of the statute and a Supreme Court opinion. See e.g., former 11 C.F.R. § 110.7(b)(4)(1992) ("party committees . . . shall not make independent expenditures in connection with a general election campaign of candidate for Federal office. . .") and FEC v. DSCC, 454 U.S. 27, 28-29, n.1 (1981) ("[p]arty committees are considered incapable of making 'independent expenditures' "). This presumption rested on the nature and primary purpose of a political party -- to nominate and elect candidates -- and on an empirical judgment that party officials as a matter of course consult with the party's candidates in making expenditures intended to influence an election. While the investigation of this matter was ongoing, however, the Supreme Court held that political parties can make independent expenditures and that the Commission must find evidence of coordination before making a determination that party expenditure limitations have been exceeded. Colorado Republican Federal Campaign Committee v. FEC, 116 S.Ct. 2309 (1996). Thus, evidence of actual coordination between the NRSC and its candidates would now be necessary to establish that the NRSC violated the Act by exceeding its coordinated party expenditure limitation at 2 U.S.C. § 441a(d).

An investigation into the circumstances surrounding the making by the NRSC of the non-federal payments at issue was conducted. Although the investigation revealed some facts that suggested the NRSC may have coordinated at least one of its non-federal payments with its candidates, taken as a whole, the evidence shows more clearly that the NRSC made the non-

federal payments with knowledge that they would be expended by the third party recipients for GOTV efforts targeted to individuals likely to support Republican candidates in elections with federal candidates, and, in some cases, with knowledge that the GOTV activities would be targeted to individuals likely to support Republican candidates in specific states or specific federal elections. The primary activities conducted and financed through the third party recipients consisted of GOTV communications that identified candidates, referenced them in their capacity as candidates, and took note of upcoming elections. Had the NRSC itself conducted the GOTV activity instead of making payments to the non-profit recipients, it would have had to finance, at a minimum, 65% of the costs of those activities with federal funds pursuant to the Commission's allocation regulations at 11 C.F.R. § 106.5.<sup>2</sup> Instead, the NRSC financed the activity through other entities using 100% non-federal funds with knowledge that the funds were to be used for allocable activities.

The NRSC's non-federal account contained corporate contributions as well as contributions from individuals and non-corporate entities that exceeded the Act's contribution limits. Accordingly, this Office recommends that the Commission find probable cause to believe that the NRSC violated 2 U.S.C. §§ 441b and 441a(f) by using prohibited and excessive funds to finance federal election activity, 11 C.F.R. §§ 102.5(a)(1)(i) and 106.5(g)(1)(i) by failing to make all payments in connection with federal elections from its federal account, including payments of

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<sup>2</sup> The GOTV communications financed by the nonprofits with NRSC funds could be viewed solely as expenditures since most discussed only federal candidates and elections. However, although the evidence is clear that the NRSC knew the funds would be used for GOTV activities for elections that included federal races, in most instances it is not evident that the NRSC had knowledge of the specific content of the GOTV communications. Thus, with the exception of the Texas special election for U.S. Senate, this brief concludes that the NRSC should have used *at least* 65% in federal funds to finance the activities as they would have if they had directly financed generic voter activity or, pursuant to Advisory Opinion 1995-25, party-financed "issue" ads.

allocable activities, and 11 C.F.R. § 106.5(c) by failing to allocate its payments for joint federal and non-federal activities between its federal and non-federal account.

## **II. FACTUAL AND LEGAL ANALYSIS**

### **A. Law**

The Act prohibits corporations and labor organizations from making contributions in connection with Federal elections and prohibits political committees from knowingly accepting such contributions. 2 U.S.C. § 441b(a). In addition, the Act places limits on contributions to candidates and political committees. Among those limits, the Act prohibits any person from making contributions to a national political party committee which in the aggregate, exceed \$20,000 per calendar year. 2 U.S.C. § 441a(a)(1)(B). Multicandidate political committees are prohibited from making contributions to a national political party committee which, in the aggregate, exceed \$15,000 per calendar year. 2 U.S.C. § 441a(a)(2)(B).

To ensure compliance with the Act's contribution limits and with the prohibition on corporate and union funds, Commission regulations require that political committees that finance activities in connection with both federal and non-federal elections either: 1) establish separate federal and non-federal accounts, with the federal account consisting only of funds subject to the Act's limitations and prohibitions or 2) establish a single account to finance federal and nonfederal activities which shall receive only contributions subject to the limitations and prohibitions of the Act. Committees which have established separate federal and non-federal accounts, such as the NRSC, must make all disbursements, expenditures and transfers in connection with any Federal election from their Federal account. 11 C.F.R. §§ 102.5(a)(1)(i) and 106.5(a)(1). "Expenditure" is defined as "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing

any election for Federal office.” 2 U.S.C. § 431(9)(A). See also 2 U.S.C. § 441b(b)(2). Where a committee has violated Section 102.5(a)(1) by disbursing funds from its non-federal account in connection with a federal election, the committee has also violated 2 U.S.C. § 441b(a) if the non-federal account contained corporate or labor organization funds at the time of the disbursement. See MUR 3670, FEC v. California Democratic Party, Civ. Action No. CIV-S-97-891 DFL PAN (E.D. Calif. 1997) and MUR 4413 (New York Republican Federal Campaign Committee). Similarly, if the non-Federal account contained contributions in excess of the limitations of the Act, the organization has also violated 2 U.S.C. § 441a(f). See MUR 4709 (Democratic County Executive Committee of Philadelphia).

Party committees with separate federal and non-federal accounts must allocate expenses for certain categories of shared activities between their federal and non-federal accounts. 11 C.F.R. §§ 106.5(a) and 106.5(g)(1)(i). These categories of activities include, inter alia, the costs of generic voter drive activities and administrative expenses. The Commission has long-recognized that get-out-the vote drives have a direct impact on federal elections. See Advisory Opinions 1978-10, 1978-28 and 1978-50. See also Explanation & Justification of Regulations on Methods of Allocation Between Federal and non-Federal Accounts, 56 Fed. Reg. 26058, 26065 (June 26, 1990). “Generic voter drives” are defined as “including voter identification, voter registration and get-out-the-vote drives or any other activities that urge the general public to register, vote or support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate.” 11 C.F.R. § 106.5(a)(2)(iv). “Administrative expenses” are defined as “including rent, utilities, office supplies and salaries, except for such expenses directly attributable to a clearly identified candidate.” 11 C.F.R. § 106.5(a)(2)(i).

The Commission has also acknowledged the impact of other political party committee activity on both federal and non-federal elections, specifically, so-called party "issue ads." In *Advisory Opinion 1995-25*, the Commission determined that party-financed media advertisements that focused on national legislative activity and promoted a national political party should be considered as made in connection with both federal and non-federal elections, unless the ads qualified as coordinated expenditures, and thus should be allocated on the same basis as administrative and generic voter drive costs. The proposed legislative ads at issue in AO 1995-25 did not mention an election and may or may not have referenced federal candidates. The Commission's determination in AO 1995-25 was grounded in Buckley v. Valeo in which the Supreme Court observed that expenditures of organizations whose main purpose is the nomination or election of a candidates are, by definition, campaign-related. Buckley v. Valeo, 424 U.S. 1 (1976). As further support for its decision, the Commission noted that the stated purpose of the ads in AO 1995-25, to gain popular support for Republican positions on given legislative measures and to influence the public's positive view of Republicans and their agenda, "encompasses the related goal of electing Republican candidates to Federal office." Although *Advisory Opinion 1995-25* post-dates the activity at issue in this matter, its analysis and treatment of party-financed legislative advocacy media ads are grounded in Buckley and in the Commission's allocation regulations which were in effect at the time of the NRSC's payments in the present matter.<sup>3</sup>

<sup>3</sup> The Commission recently considered the financing of so-called party-financed issue ads in the context of audits of the 1996 Republican and Democratic presidential campaigns. On December 10, 1998, the Commission voted to reject FEC staff's recommendation concerning a repayment of presidential matching funds to the extent that the repayment arose from certain party-financed ads that FEC staff concluded were in-kind contributions to the campaigns. The staff's conclusion was based on an analysis that the ads, many of which depicted the presidential candidates and discussed their issue positions, were coordinated with candidates' campaigns and contained an electioneering message. The Commissioners'

Senate and House campaign committees must allocate their administrative expenses and costs of generic voter drive activities based on the ratio of federal expenditures to total federal and non-federal disbursements ("the funds expended method") made by the committee during the two-year federal election cycle, with a *minimum* of 65% to be allocated to the federal accounts each year.<sup>4</sup> 11 C.F.R. § 106.5(c)(1) and (2). If a higher federal share is calculated by the Senate or House campaign committee under the funds expended method, then the committee must allocate that higher percentage share to its federal accounts. 11 C.F.R. § 106.5(c)(2). This ratio shall be estimated and reported at the beginning of each federal election cycle on Schedule H-1 of the FEC disclosure report forms.<sup>5</sup> 11 C.F.R. § 106.5(c)(1)(i). A party committee must pay "the entire amount of an allocable expense from its federal account and [then] transfer funds from its non-federal account to its federal account solely to cover the non-federal share of that allocable expense." 11 C.F.R. § 106.5(g)(1)(i).

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reasons for rejecting the repayment recommendations involving the party ads varied. See Scott E. Thomas' Statement for the Record in Audits of Clinton/Gore and Dole/Kemp Campaigns dated December 23, 1998. In a recent Statement of Reasons, four Commissioners explained that they disagreed with the FEC staff's use of "an electioneering message" standard in its analysis. See Statement of Reasons of Commissioners Wold, Elliott, Mason and Sandstrom on the Audits of Clinton/Gore '96 and Dole/Kemp '96, dated June 24, 1999. The "electioneering message" standard is not at issue in the present matter. However, it is instructive to this matter that the party committees who financed the presidential ads at issue in the audits paid for many of them with a combination of federal and non-federal funds.

<sup>4</sup> The minimum fixed percentage is applied to House and Senate campaign committees due to their narrow focus on Congressional candidates and their limited involvement in non-federal elections. Explanation & Justification of Regulations on Methods of Allocation Between Federal and non-Federal Accounts, 56 Fed. Reg. 26058, 26063 (June 26, 1990).

<sup>5</sup> A review of the NRSC's disclosure reports for the 1991-92 and 1993-94 election cycles indicate that the NRSC did not file a Schedule H-1 showing its allocation formula for administrative/voter drive expenses in those cycles.



The allocation regulations of Section 106.5 apply only to disbursements made in connection with both federal and non-federal elections. Expenses for voter drive activities conducted on behalf of a wholly federal special election must be financed entirely from a party committee's federal account. See Explanation & Justification of Regulations on Methods of Allocation Between Federal and non-Federal Accounts, 56 Fed. Reg. 26058, 26063 (June 26, 1990). See also Advisory Opinion 1998-9, footnote 8.

The Commission has determined in a prior enforcement matter involving 1992 activity, that a political party committee that gives non-federal funds to a third party with the knowledge that all or part of the funds will be used to conduct voter drives or other allocable activity must allocate and report those expenditures as if the party made those expenditures directly. See MUR 3670, FEC v. California Democratic Party, Civ. Action No. CIV-S-97-891 DFL PAN (E.D. Calif. May 9, 1997) ("California Dems") (alleging that the California Democratic Party violated the Act and regulations by transferring non-federal funds to an initiative group to conduct voter registration and get-out-the-vote activities prior to the 1992 general election with knowledge that the group would use the funds to increase the number of voters who would vote for Democratic candidates, including Democratic candidates for federal office).<sup>6</sup> The

<sup>6</sup> But see MUR 4215 where the Commission declined to adopt the General Counsel's recommendations to find probable cause to believe that the Democratic National Committee ("DNC") violated 2 U.S.C. §§ 441a(f) and 441b and 11 C.F.R. § 106.5(b) when it transferred certain funds to state party committees with the intention that those funds be used for voter drive advertisements and allocated these transfers between its federal and non-federal accounts using the state party committees' more favorable allocation ratios rather than its own allocation ratio. The Commission's determination in MUR 4215 is distinguishable from the matter in two respects. First, in finding no probable cause to believe that the DNC violated the Act, the Commission relied, in part, on provisions of the Act and Commission regulations which permit unlimited transfers between a national party committee and an affiliated state party committee. See Statement of Reasons in MUR 4215 dated March 26, 1998 at 4. Second, MUR 4215 involved *how* payments for the voter drive ads should be allocated between federal and non-federal accounts; the need to allocate the payments between accounts in some manner was unquestioned. In the instant matter, only non-federal funds were used.

interpretation of the Act and Commission regulations reflected in California Dems gives effect to the Act's prohibitions and limitations by ensuring that a party committee cannot do indirectly what it is prohibited from doing directly — that is, use impermissible funds for campaign activity intended, in whole or part, to influence Federal elections.

## **B. Overview of NRSC Payments to Non-Profit Groups**

### **1. List of the Non-Federal Payments**

The NRSC's non-federal payments to the three non-profit groups spanned two election cycles, 1991-92 and 1993-94, and totaled \$840,000. The payments at issue are:

<u>Recipient Group</u>	<u>Date</u>	<u>Amount</u>
ADF	10/02/92	\$250,000
ADF	11/10/92	30,000
ADF	03/12/93	170,000
ADF	05/26/93	<u>40,000</u>
	Total	\$490,000
 NRLC	 10/02/92	 \$ 25,000
NRLC	10/20/92	15,000
NRLC	11/17/92	45,000
NRLC	10/31/94	50,000
NRLC	11/01/94	50,000
NRLC	11/03/94	60,000
NRLC	11/04/94	<u>15,000</u>
	Total	\$260,000
 CFA	 10/20/92	 \$ 50,000
CFA	11/11/92	<u>40,000</u>
	Total	\$ 90,000

Cover letters accompanying the payments and signed by either the NRSC's political director or its in-house counsel indicated that the payments were for "good government activities" to be used in a manner consistent with the organization's charter or not-for profit character. The cover letters included a sentence stating, "[p]lease note that utilizing any of this

money in any way to influence a federal election is strictly prohibited." Check stubs for each of the payments describe them variously as "party development," "transfers," "party building," "contribution" or "donation." NRSC employees deposed in this matter testified that they understood the cover letter prohibition to prohibit express advocacy of a candidate's election or defeat or the making of a contribution to a candidate.

The NRSC acknowledged in its interrogatory responses that it knew that two of the nonprofits – ADF and NRLC – intended to undertake activities aimed at turning out supporters to vote in elections that included federal candidates, but maintained it did not know where the groups would undertake such activities or the specific content of any GOTV communications. See NRSC's October 16, 1995 Response to Commission Interrogatories at 7-9. As discussed below, however, the evidence indicates that in some instances the NRSC made payments to these groups, with knowledge that the funds would be used for get-out-the-vote activities aimed at turning out favorable voters in Senate elections of particular interest to the NRSC or in states with close Senate elections. More importantly, in all instances, the evidence shows that the NRSC gave non-federal funds to the non-profit organizations specifically to turn out voters likely to support Republicans in elections that included federal candidates. Thus, even if the NRSC was unaware of the specific content of the GOTV conducted by the nonprofits, at a minimum, it knew that non-federal funds would be used to finance voter turnout activities in elections with federal candidates. Had the NRSC itself conducted the activities that it financed through others, it would have had to use federal funds to pay for at least 65% of the cost of the activities. By financing 100% of the costs of the GOTV activities with non-federal funds, the NRSC used prohibited and impermissible funds to influence federal elections in violation of the Act and Commission regulations.

## 2. Central NRSC Players

Two individuals were involved in most, if not all, of NRSC's non-federal payments to the three named recipients in 1992, 1993 and 1994. Paul Curcio, NRSC's Political Director in 1992-1994, gave written or oral approval for the 1992 and 1993 payments and, according to one NRSC official, was involved in internal discussions about whether to make the 1994 payments to the NRLC. Curt Anderson, the NRSC's Southern Regional Director in 1992, admittedly urged his superiors to make two of the October 1992 payments to the recipients and prepared memos directing that all three of the October 1992 payments be issued and delivered to the groups. Anderson left the NRSC at the beginning of 1993 to work as a private consultant whose clients included ADF<sup>7</sup> and NRLC. As ADF's fundraising consultant in 1993, Anderson was involved in soliciting the 1993 NRSC non-federal payments to ADF. In late 1993, Anderson became the Midwestern Field Director at the Republican National Committee ("RNC"). He continued to serve as a fundraising consultant to the NRLC even while serving as an RNC Field Director and, according to one deponent, was involved in obtaining the NRSC's 1994 non-federal payments to the NRLC.

## 3. NRSC's General Knowledge of Recipients' Activities through its Work With Coalitions

Curt Anderson's 1992 work as an NRSC Field Director brought him into contact with various coalition groups. Calendars produced by NRLC and ADF reflect regular meetings with Anderson in 1992. Anderson testified in his deposition that as a regional field director he was

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<sup>7</sup> Anderson was actually paid by the American Defense Institute ("ADI"), a 501(c)(3) organization related to ADF and operated by the same persons. However, ADF transferred a large portion of the funds received from the NRSC to ADI which then paid the salaries of Anderson and others working on the Military Voter Program ("MVP").

the primary contact between assigned Senate campaigns and the NRSC, and that his job was "to help them do the best they can to win." Curt Anderson Deposition at 34-35 (hereinafter "Anderson at \_\_\_\_"). Anderson was involved in everything the campaigns did. He cited fundraising, developing a message and determining how to turn out voters as standard campaign activities and acknowledged he was involved in all of them. Anderson also acknowledged that meeting with coalition groups to drum up support is "something every campaign does," although he testified that he did not recall specific meetings with groups during 1992. *Id.* at 47-48.

Anderson's knowledge of and interactions with the three recipient groups preceded the non-federal payments at issue in this matter. Prior to working for the NRSC, Anderson worked at CFA in 1986-87, heading the organization at one point. There, he was primarily involved in organizing meetings among like-minded conservative groups that focused on legislation. Upon coming to the NRSC in 1989, Anderson served as its Coalitions Director. In this role, Anderson accompanied NRSC's then Political Director Richard Shelby to meetings in 1990 with coalition groups including NRLC, CFA, and the Christian Coalition. As in the relevant period, the 1990 meetings with coalition groups coincided with significant NRSC soft money payments to those groups during the same year.<sup>8</sup>

Anderson testified in his deposition that his primary function as Coalitions Director was to assist the Republican party in its efforts to reach out to different constituencies and to assist campaigns in doing so, in large part to help elect Republican Senate candidates. Anderson at 33.

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<sup>8</sup> NRSC's soft money payments to NRLC, CFA and the Christian Coalition in 1990 totaled \$380,000, 180,000 and \$64,000, respectively.

After Senator Gramm assumed the NRSC chairmanship in early 1991, the Coalitions Director position was eliminated and Anderson accepted a field director position.<sup>9</sup>

Anderson's role as Coalitions Director afforded him and the NRSC extensive knowledge about coalition groups such as NRLC and ADF. NRSC's knowledge and the role that it saw for coalition groups in Republican Senate campaigns is reflected in an NRSC Coalition Building Manual obtained by this Office during its investigation and since reprinted in the U.S. Senate Governmental Affairs Committee's final report on its own investigation into the 1996 federal election. See Investigation of Illegal or Improper Activities in Connection with 1996 Federal Election Campaigns, Final Report, S. Rep. No. 105-167, Vol. 4 of 6 at 5987-6015(1998) ("Senate Report").<sup>10</sup> Information in the Manual indicates it was written just after the 1990 elections for use by Republican Senate campaigns, timing which suggests that it was prepared after Senator Gramm had eliminated the Coalitions Director position. A 1997 article in The Hill newspaper stated that Curt Anderson "promulgated" the Manual which it says was distributed during the 1992 election cycle and used in the 1994 elections. Robert Schlesinger, *GOP Urged Hill Staffers to Aid Campaigns*, The Hill, November 26, 1997 at 1 and 12. Anderson's involvement in creating the Manual is likely given his expertise as Coalitions Director in

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<sup>9</sup> Both the field director and coalitions director positions were part of the NRSC's Political Division. Although Anderson stayed, Senator Gramm laid off most of the rest of the Political Division in early 1991. See Tom Kenworthy and Ann Devroy, *NRSC Field Staff Let Go*, The Washington Post, February 9, 1991 at A4.

<sup>10</sup> Neither the NRSC nor Curt Anderson produced a copy of this document in response to Commission subpoenas. Consequently, it was not in hand at the time of the depositions of Anderson and other former NRSC personnel. The redacted copy of the Manual reprinted in the U.S. Senate Governmental Affairs Committee's final report, cited above, is identical to the Manual copy in the Commission's possession.

the 1990 election cycle and his listing in the Manual as a resource for questions about coalition groups. See Senate Report at 6008.

The Manual illustrates for candidates how coalition groups can be used to help them win elections. It instructs campaigns to develop coalition plans to “energize the groups and voter blocs necessary for victory,” and urges campaigns to focus efforts only on groups that can help a candidate get “votes, money and media.” Senate Report at 5990-5991. The Manual states that the NRSC’s approach to coalitions development “is definitely biased toward direct voter contact,” noting that coalition groups can obtain votes by contacting their members on a candidate’s behalf using mail and phones at no cost to the campaign, by increasing the turnout of coalition members, by providing campaign volunteers and by making their membership lists available for targeted messages. Senate Report at 5989-5990.

The NRSC Manual goes on to stress the value in targeting the “right groups”:

Needless to say, the ability to target a specific message directly to a group of voters who are already identified as having an interest in that message is a very valuable tool. (emphasis added).

Unlike most of the earned and paid media in which you must stress themes broad enough to appeal to a wide range of people, targeted messages can be very pointed without the risk of cross-pressuring your audience. (Emphasis in original).

Senate Report at 5997.

In addition to illustrating the election-influencing value of targeted direct voter contact through coalition groups, the NRSC Manual also illustrates NRSC’s extensive knowledge about such groups. As a first step in developing a coalition plan, the Manual instructs campaigns to gather information about various coalitions with whom they can work. A completed “constituent group profile” used in a 1990 Senate election is included in the Manual as a sample of the type of

information to be obtained. The sample profile, of a state pro-life group, contains detail such as the number of organization members and the geographic concentration of its membership, the number of identified pro-life supporters in its database, the types and frequency of routine communications mailed to members, the size of its mailing list, and its funding sources. The sample profile also summarizes contacts with the state group and the National Right to Life Committee, and in assessing the group's direct voter contact program, notes "it is unsophisticated and will need our help." Senate Report at 5994-5996.

Other references in the Manual confirm the NRSC's in-depth knowledge of coalition groups and their roles in campaigns. One section lists the key national groups "who have been most active in encouraging their constituencies to support Republican candidates" and contains descriptions of the groups. Senate Report at 6007-6009. The introduction to this section emphasizes that the NRSC is available "to work with you and give you an idea of what many of the national groups have done in previous campaign cycles." Although most of the group names and descriptions have been redacted in the Commission's copy of the Manual, it includes the National Right to Life Committee/PAC-- a recipient of NRSC payments in both 1992 and 1994. The description of the NRLC/PAC notes that "[s]tate membership lists are most often maintained by the local affiliates. They can provide volunteers to a campaign and do mailings, phone programs, literature drops, earned media, paid media and GOTV activities." *Id.* at 6009. The Manual notes that its descriptions of key groups are brief and instructs campaigns to contact Curt Anderson at the NRSC "for more background information on their activities and issue concerns." *Id.* at 6008.

The NRSC Coalition Building Manual demonstrates the importance the NRSC attached to working with coalition groups to target messages to certain segments of voters in order to



motivate them to vote for specific candidates. It also reflects the extensive, particularized knowledge the NRSC had about the activities of coalition groups. Indeed, as described in more detail below, the NRSC followed its own advice to candidates by financing through ADF, NRLC and CFA voter turnout messages targeted to groups "already identified as having an interest in the message." In financing these voter turnout activities through the three nonprofit groups, the NRSC used non-federal funds to finance activity that influenced the election of Republican Senate candidates.

### **C. Summary of Evidence**

Viewed as a whole, the evidence adduced in the investigation shows that the NRSC made \$847,000 in non-federal payments to the non-profit recipient groups over the course of two election cycles for the purpose of financing GOTV activities conducted by the recipients in connection with elections that included federal candidates, and in some cases in connection with solely federal special elections. Although the evidence gathered varies as to each payment, in many instances it shows that the NRSC made the payments with knowledge that the GOTV activities would be targeted to individuals the NRSC believed would likely support Republican candidates in specific states or in specific federal elections.

The evidence relevant to each non-federal payment is fully discussed separately and by year in Section II.D of this report. A summary of the evidence as to each payment follows:

#### **1. October 1992 Non-Federal Payment to ADF**

The evidence shows that the NRSC made a \$250,000 non-federal payment to ADF in October 1992 to finance ADF GOTV activities aimed at turning out military personnel to vote in the November general election in key states with Senate races targeted by the NRSC. NRSC former political director, Paul Curcio, testified that the money was provided for military voter

turnout. ADF former executive director Mike McDaniel acknowledged that ADF tailored a funding proposal, which was to be presented to the NRSC for a military voter turnout program, with input from the NRSC's Southern field director and from a consultant who also developed voter files for the NRSC in two targeted states; discussed with the NRSC Senate races the NRSC was interested in; and targeted GOTV mailings with Senate candidate questionnaires to certain states because "they were races that the Senatorial Committee was interested in." Even if the NRSC was unaware of the specific content of ADF's 1992 GOTV communications, at a minimum, it knew that the non-federal funds it gave to ADF would be used to finance military voter turnout activities in key states with Senate elections which it had targeted. Consequently, the NRSC should have used at least 65% in federal funds to finance these activities. No federal funds were used.

## **2. October 1992 Non-Federal Payments to NRLC and CFA**

The evidence establishes that the NRSC gave a total of \$40,000 in non-federal payments to the NRLC in October 1992 to finance voter turnout of pro-life supporters in the November 1992 general election. Former NRSC political director Paul Curcio testified that the NRSC gave \$40,000 in non-federal funds to NRLC in October 1992 for voter turnout. Curcio also acknowledged that the NRSC believed that turnout of pro-life voters would benefit Republican candidates. Indeed, NRLC's support of Republican presidential candidate George Bush was well known as the NRLC had publicly endorsed Bush for re-election in March 1992. Moreover, the NRSC made the non-federal payments after meetings with the NRLC at which the organizations discussed Republican Senate candidates whom the NRLC viewed favorably and the status of Senate races. The turnout of pro-life voters by the NRLC in a general election that included an NRLC-endorsed Republican Presidential candidate had an impact on federal elections.

Consequently, the NRSC's payment to the NRLC for GOTV activities should have been comprised of at least 65% in federal funds. No federal funds were used.

Similarly, Curcio also testified that the \$50,000 non-federal payment to Coalitions for America in October 1992 was for voter turnout. The NRSC made the payment after CFA President Eric Licht solicited former NRSC field director Curt Anderson for a donation. Internal NRSC records show that two weeks before the November election, Anderson requested that a check be issued to CFA and that the organization should be called to pick it up. CFA sponsors meetings of conservative organizations and makes grants to conservative entities. As a former employee of CFA, NRSC field director Curt Anderson was familiar with its activities and with the groups who regularly attended CFA meetings, including the National Right to Work Committee ("NRTWC"). At the time it received the NRSC check, CFA made a \$25,000 donation to the NRWTC which then sent a direct mailing to its supporters concerning the U.S. Senate race in Wisconsin, a campaign on which Anderson was working. The mailing was highly critical of the Democratic Senate candidate, Russ Feingold.

Anderson's involvement in the NRSC payment to CFA and the ultimate use of a portion of the NRSC funds for a mailing concerning a Senate campaign for which Anderson was working, suggest that the payment was for voter turnout in a specific Senate race. But, even if the NRSC was unaware of the specific election at which voter turnout would be aimed, at a minimum, the evidence suggests that it knew its funds would be used for voter turnout in a general election that included federal candidates. Consequently, the NRSC's payment to the NRLC for GOTV activities should have been comprised of at least 65% in federal funds. No federal funds were used.

### 3. November 1992 Non-Federal Payments to ADF, NRLC & CFA

Viewed as a whole, the record establishes that the NRSC's \$115,000 in non-federal payments to the same three non-profit organizations in November 1992, only weeks after its October payments and just before an important U.S. Senate runoff election in Georgia, were also for GOTV activities aimed at voters likely to support the Republican Senate candidate in Georgia. Although the NRSC officials who approved the payments testified that they did not recall why most of the payments were made, the timing and circumstances surrounding the payments, the ultimate use of the funds for voter turnout activities aimed at the runoff election (which followed the use pattern of the October payments), and testimony by staff of one recipient, ADF establish that the NRSC knew that the non-federal payments were to be used to turn out voters in a special election that involved a U.S. Senate race as well a partisan state race for public service commissioner.

The NRSC had a strong motive for using non-federal funds to turn out Republican voters for the Georgia U.S. Senate runoff. Voter turnout was especially critical because the race was expected to be close, a fact acknowledged by NRSC staff in their depositions. Only one percentage point had separated Wyche Fowler and Republican candidate Paul Coverdell in the general election. Moreover, time to mobilize voters was short since the election was scheduled to occur only three weeks after the general election. However, because the NRSC had already exhausted its contribution and coordinated expenditure limitations for the Coverdell campaign in the general election, it had no ability to assist the campaign directly with federal funds. The NRSC sought to remedy this situation by requesting an advisory opinion from the Commission within a few days after the general election seeking to determine whether it could make additional coordinated expenditures, totaling \$535,000, on behalf of Coverdell. In the meantime,

while awaiting a Commission response to its advisory opinion request,<sup>11</sup> the NRSC transferred \$130,000 in non-federal funds to the Georgia Republican Party which was conducting a voter turnout operation along with the RNC. During the same period, the NRSC made the non-federal payments to ADF, CFA and NRLC. It also marshaled its resources to assist the Coverdell campaign by sending its top officials and several staffers to Georgia.

Former ADF Executive Director Mike McDaniel acknowledged in his deposition the \$30,000 nonfederal payment to ADF was to turn out military voters for the Georgia runoff election. ADF's GOTV activities included a radio ad broadcast in markets close to military bases, base tours by ADF President Red McDaniel and the production and distribution of video Public Service announcements, all of which urged military members to vote in the Georgia runoff election. Former NRSC field director Curt Anderson acknowledged in his deposition that the NRSC believed that the Republican party had a better shot at appealing to military voters.

Former NRSC Political Director Paul Curcio acknowledged in his deposition that all of NRSC's 1992 payments to NRLC, including the November non-federal payment, were for voter turnout, although he stated that he did not know the specific states the activity would be focused on. However, the circumstances surrounding the NRLC's receipt of the funds and the NRLC's admitted use of the funds strongly support a conclusion that the November payment was for voter turnout for the Georgia runoff election.

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<sup>11</sup> The NRSC's advisory opinion request was designated AOR 1992-39. On November 19, 1992, the Commission was unable to approve by the requisite four votes an Advisory Opinion with respect to whether an additional coordinated expenditure limit was available for the Georgia runoff election. NRSC's disclosure reports show that the following day, November 20, 1992, the NRSC made an additional \$535,607 coordinated expenditure on behalf of Paul Coverdell for media ads.

NRLC President David O'Steen addressd the circumstances surrounding the November NRSC payment and the NRSC's use of the funds in his deposition. O'Steen testified that he received a phone call from the NRSC, prior to the receipt of the November NRSC payment, notifying him that NRSC would be sending a check and asking whether the NRLC would in turn make a contribution to the Christian Coalition ("CC"). After the NRSC's phone call, O'Steen testified that he spoke by phone with Christian Coalition Executive Director Ralph Reed and discussed the NRLC making contributions to CC and its Georgia state affiliate, the Georgia Christian Coalition ("Georgia CC"). The Christian Coalition, through the Georgia CC, had distributed voter guides in connection with the November 3 general election for U.S. Senate in Georgia, and published reports in November 1992 indicated that it planned to do so again for the runoff election.

According to O'Steen's deposition testimony, after the NRLC received the \$45,000 non-federal payment from NRSC, the NRLC used the funds to make \$25,000 in contributions to the Christian Coalition and the Georgia CC and to finance "non-partisan" GOTV phone calls to pro-life supporters urging them to vote in the Senate runoff election. The NRLC's phone calls portrayed Coverdell as a supporter of, and his Democratic opponent as an opponent of, certain pro-life positions. Similarly, the record shows that the Christian Coalition and its Georgia state affiliate distributed a voter guide for the runoff election that, inter alia, portrayed Coverdell and the Republican state public service commission candidate as opposing "abortion on demand" and their Democratic candidates as supporting it.

A similar pattern occurred with the NRSC's November non-federal payment to CFA. President Eric Licht testified that he could not recall the circumstances under which he received the NRSC's second non-federal payment of \$40,000. However, the record shows that

immediately upon receiving the NRSC's November 11<sup>th</sup> payment, CFA made a second contribution to the National Right to Work Committee, this time in the amount of \$35,000. The NRTWC subsequently sent two mailings, dated November 16 and November 18, to NRWTC supporters in Georgia concerning the candidates in the U.S. Senate race. The mailings portrayed Democrat Fowler as a friend of "Big Labor" and Republican Coverdell as having a 100% commitment to "Right to Work." The mailings contained a candidate survey on Right to Work issues that reflected all positive responses from Coverdell and no responses from Fowler.

Viewed as a whole, the timing of the payments, just before a special runoff election in which turnout was critical and during a period when the NRSC was unable to use federal funds to directly support its candidate; the testimony of an ADF staff member and an NRSC staff member that the November payments to ADF and the NRLC, respectively, were for voter turnout; the ultimate use of the payments; and the fact that NRSC made the payments to the same recipients to which it had admittedly given funds for voter turnout just a month earlier, strongly support the conclusion that the NRSC made the November 1992 payments with the knowledge that they would be used to turn out voters likely to support Republican candidates in a special election that included a U.S. Senate race. Consequently, the NRSC's payment to the NRLC for GOTV activities should have been comprised of at least 65% in federal funds. No federal funds were used.

#### **4. 1993 Non-Federal Payments to ADF**

The evidence shows that the NRSC made two non-federal payments to ADF in 1993 totaling \$210,000 specifically so that organization could conduct voter turnout aimed at military personnel with homes of record in Texas for two special federal elections: the May 1, 1993 special U.S. Senate election and the June 5, 1993 special election runoff for U.S. Senate. As

with the 1992 Georgia runoff, the NRSC had a strong incentive to use all non-federal funds for GOTV since, as of the end of January 1993, it was reporting a \$5.8 million dollar debt and approximately \$340,000 cash on hand. And, according to NRSC's 1993 Executive and Deputy Executive Directors, William Harris and David Carney, respectively, the NRSC's debt raised concerns about its ability to participate in the Texas special election.

NRSC and/or ADF staff acknowledged in their depositions that the 1993 NRSC's non-federal payments were for voter turnout for the two Texas elections. Moreover, the payments followed meetings between NRSC and ADF in which ADF presented proposals detailing the GOTV activities it planned to undertake in the Texas elections.

With respect to the period before the May 1 special election, NRSC Deputy Executive Director David Carney testified he and ADF President Eugene "Red" McDaniel had a meeting at which McDaniel showed him Senate candidate questionnaires that ADF had mailed in the past, and at which they discussed how the issues contained in the questionnaire could be updated. Carney further testified that he understood that ADF would use the NRSC funds to send a mailing to military members that would include what he termed an absentee ballot enabling military members to vote in the special election and a candidate questionnaire. The record also shows that, prior to the special election, ADF faxed to the NRSC for comment proposed scripts for videotaped Public Service Announcements and an unidentified document just hours before it began faxing candidate questionnaires to major party candidates running the Texas special election.

With respect to the June 5, 1993 special election runoff, former ADF Program Director John Isaf acknowledged that ADF presented to the NRSC a funding proposal for additional GOTV activities that ADF proposed to undertake for the runoff, including a second mailing to



military personnel with a candidate questionnaire completed by the runoff candidates. David Carney testified that he recalled discussions at the NRSC about ADF doing a second mailing and Mike McDaniel acknowledged that the second 1993 NRSC check was for ADF to conduct military voter turnout for the runoff.

The above evidence establishes that the NRSC gave ADF *non-federal funds* in 1993 specifically to turn out military voters for a special election for U.S. Senate. The record shows that there were no other statewide partisan elections in Texas in May and June 1993. Consequently, the NRSC should have used 100% federal funds for the GOTV activities rather than 100% non-federal funds.

#### 5. 1994 Non-Federal Payments to NRLC

The evidence shows that the NRSC made \$175,000 in non-federal payments to the NRLC in the week before the November 1994 general election to conduct voter turnout activities aimed at voters likely to support Republican candidates. David Carney in his deposition testimony and Senator Gramm in his published statements in the Washington Post admitted that the payments were for voter turnout. The NRSC admittedly believed that the turnout of pro-life supporters benefited Republican candidates. Moreover, there is evidence suggesting that the NRSC knew where the GOTV activity it financed would be conducted. NRL PAC Director Carol Long testified that she specifically asked the NRSC Executive Director for funds so that NRLC could make voter turnout calls in Pennsylvania. Moreover, through a meeting with representatives from NRLC's Minnesota state affiliate, David Carney knew that MCCL was planning to make phone calls to turn out its members in Minnesota where the Republican Senate candidate was strongly pro-life. Had the NRSC financed this voter turnout activity itself, at least

65% of the costs of the GOTV activity would have had to be financed with federal funds. No federal funds were used.

**D. Detailed Evidence**

**1. 1992 General Election Activity**

**a. October 1992 Payment to American Defense Foundation**

On October 2, 1992, the NRSC made a \$250,000 payment to the American Defense Foundation. Former NRSC Political Director Paul Curcio testified that this payment was for a military voter turnout program, and NRSC's records show that he and Jeb Hensarling approved the expenditure. Curt Anderson acknowledged in his deposition that he urged the NRSC to make this contribution. Curt Anderson Deposition at 127-128 (hereafter "Anderson at \_\_\_\_"). Indeed, Anderson authored an October 1 memo to Paul Curcio's assistant, Enoch Ebong, requesting that this check and a \$25,000 check to the NRLC be issued, and instructing Ebong to send the checks by courier or to call the organizations to pick them up; a handwritten notation on the memo urges, "this needs to happen today." The check stub for the ADF payment describes it as being for "party development." This payment, together with NRSC's later payment to ADF in November 1992, discussed below, constituted 99% of ADF's 1992 income.

ADF is a non-profit corporation exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(4). According to ADF's Articles of Incorporation, dated January 5, 1983, the purposes of the organization include the promotion of "the social welfare of the United States by informing and educating the American people on issues of national and worldwide importance, including, but not limited to veterans' affairs and problems relating to prisoners of war and persons missing in action, and offering a public dialogue on these issues." According to information appended to ADF/ADI grant proposals, ADF also "functions as a Washington

advocate for citizens interested in promoting strong national security policy." See "Defend America: Vote, The 1992 Military Voter Impact Program of The American Defense Foundation at Appendix E (hereinafter "1992 MVP Proposal").

ADF is related to another organization – the American Defense Institute ("ADI"). ADI is a non-profit corporation exempt from federal taxation pursuant to 26 U.S.C. § 501(c)(3). Founded as an educational organization in 1983, ADI assertedly functions as a clearinghouse for defense-related information for Members of Congress, the news media, academia, high school students, and the general public. According to the grant proposal submitted to the NRSC, ADI also sponsors undergraduate internships, graduate and post-graduate fellowships, issue seminars and audiovisual programming, defense policy and issue research and analysis, and quarterly and monthly publications. *Id.*

ADF and ADI operate under common management control and share employees and office space. At all relevant times in 1992 and 1993, Captain Eugene "Red" McDaniel and his son, Michael McDaniel, were president and executive director, respectively, of both ADF and ADI. John K. Isaf served as Director of Public Affairs and Programs for both organizations.

Since 1984, ADF and ADI have sponsored a Military Voter Program ("MVP") aimed at military personnel and their families. The components of the MVP have varied throughout the years depending on funding, but the program generally seeks to assist military personnel and their families to register to vote and encourages them to do so. The MVP has been conducted under the umbrella of both ADF and ADI throughout the years. In 1992 and 1993, MVP costs were shared between ADF and ADI. Many of the direct expenses for the MVP were paid directly by ADF after it received the NRSC's payments. ADF then transferred most of the remaining funds to ADI which paid staff salaries, other administrative costs and miscellaneous

MVP expenses. Although the MVP can thus be seen as a joint ADF/ADI program, all references in this brief are to ADF.

NRSC's October 1992 payment to ADF had its roots in a series of meetings and phone calls between the NRSC and ADF in 1992, principally between Mike McDaniel and NRSC Coalitions Director/Field Representative Curt Anderson. Anderson was a personal friend whom McDaniel had known since about 1989. Records produced by ADF during the investigation show that as early as February 25, 1992, Mike McDaniel began meeting with Anderson to discuss the MVP. See 1992 calendar of Mike McDaniel (no document number) and ADI reimbursement forms (Doc. Nos. 500829A-829B).<sup>12</sup> Three weeks later, on March 17, 1992, McDaniel's calendars reflect another meeting with Anderson and a former associate of Anderson's, John Grotta. Grotta, a specialist in direct voter contact programs, had been the NRSC's Director of Voter Contact Services from 1989-1991, at the same time Curt Anderson had served as NRSC Coalitions Director. Grotta had also directed GOTV efforts at the RNC in 1988. Grotta's specialty, then and now, is targeting persuasion mail and phone calls to Republican voters. At the time of the March meeting, Grotta was developing clients for his own company which he had begun to operate full-time after leaving the NRSC at the end of 1991. Although, McDaniel could not confirm the dates of specific meetings, he identified Grotta as a direct mail expert and testified that to the best of his recollection he, Grotta and Anderson met to

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<sup>12</sup> Cites to "Doc. Nos." throughout this brief are to the Bates-stamp number affixed to each document by FEC staff. They are included here to help identify cited documents.

discuss the "specifics" of the MVP.<sup>13</sup> ADF subsequently hired Grotta as a consultant. Deposition of Mike McDaniel at 85-87 (hereinafter "McDaniel at \_\_\_"). John Grotta described his role as one of advising ADF about possible funding sources for the MVP and helping ADF "fine-tune" a funding proposal. He eventually produced a general election mailing for ADF that was sent to military personnel in targeted states. Deposition of John Grotta at 51, 65-68 (hereinafter "Grotta at \_\_\_").

The record shows that between late April and June, 1992, Grotta helped ADF put together a comprehensive funding proposal for the MVP, advising them how best to present to possible donors ADF's unique ability to reach a segment of pro-defense voters.<sup>14</sup> Grotta encouraged ADF to stress its ability to contact voters on a "targeted - state by state basis, whether they are located in that state or not." May 5, 1992 memo from Grotta to Isaf and McDaniel (Doc. No. 550141-143). Documents show that ADF planned a two-phase proposal: the first phase consisting of elements such as military base tours by McDaniel to encourage more voter assistance efforts as well as print and public service announcements encouraging registration and voting, and the second phase consisting of direct mailings to military personnel, Grotta's particular expertise. *Id.* and 1992 MVP Proposal, generally (Doc No. 500001-500048).

<sup>13</sup> The likelihood that a meeting occurred in March with Anderson and Grotta is lent support by the fact that a month earlier Grotta and Anderson were scheduled to meet with NRLC Executive Director David O'Steen. As NRSC's Director of Voter Contact Services in 1990, Grotta had built voter filers, helped campaigns with mail and implemented phone programs. As NRSC's Coalitions Director during the same period, Anderson was a proponent of targeting segments of voters through mail and other direct voter contact. Neither Anderson or Grotta recalled meeting together with McDaniel, but O'Steen and McDaniel acknowledged such meetings.

<sup>14</sup> Grotta also provided advice on those ADF could approach for funding, and was instrumental in setting up a meeting between ADF and Haley Barbour for the purpose of gaining access to potential donors. At the time, Barbour was a GOP consultant and an RNC committeeman from Mississippi.

Mike McDaniel acknowledged in his deposition that he spoke with Anderson by phone as ADF developed and refined its MVP proposal and that he showed Anderson written proposals for MVP funding before ADF made its formal presentation to higher-level NRSC officials. McDaniel at 126-127, 108. McDaniel also testified that there was a lot of brainstorming about how ADF should tailor its program to obtain funding, and acknowledged that as part of this brainstorming he discussed with Grotta and Anderson the states to which the MVP should be targeted. As McDaniel stated, "[Anderson] believed in our program. So he was doing everything he could to help." McDaniel at 122-127, 159.

Armed with a comprehensive written proposal Grotta had helped them prepare and for which Anderson had provided input, ADF officials met with Anderson, Political Director Paul Curcio, and Executive Director Jeb Hensarling on June 29, 1992 at the NRSC to seek funding for the MVP. See calendar of Mike McDaniel and ADI reimbursement form (Doc. No. 500829A). McDaniel testified that during the meeting he and Isaf described the MVP to Anderson, Curcio and Hensarling and presented the NRSC with a written proposal. McDaniel at 106-109. See also John Isaf Deposition at 61-64 (hereinafter "Isaf at \_\_"). ADF's June 29<sup>th</sup> proposal outlined various components of the MVP, including a mailing to military personnel which would contain a Presidential candidate questionnaire, a comparison of party platforms, and federal registration and absentee ballot application forms; military base visits by Red McDaniel to encourage voting; and video and print Public Service Announcements ("PSAs") to be placed in military newspapers and local media. See generally, 1992 MVP Proposal (Doc No. 500001-48). The proposal listed 25 states in which ADF proposed to conduct GOTV activities at a cost of \$743,535, with more than half the costs attributable to direct mailings. Each of the targeted states included in ADF's June 29<sup>th</sup> proposal, except Texas and Michigan, had Senate races scheduled. See id. at 500004

and Appendix C (500022). A time line included in the proposal showed motivational tours and PSA distribution to begin in July and August and direct mailings to begin in September. Id. at Appendix D (500024-26).

In his deposition testimony, NRSC former Executive Director Jeb Hensarling confirmed that a meeting between NRSC and ADF occurred, although he could not place a date on the meeting. Hensarling testified that, to the best of his recollection, he personally participated in only one meeting with McDaniel, Anderson and Curcio at the NRSC, at which McDaniel described ADF's military voter program. Jeb Hensarling Deposition at 178-179 (hereinafter "Hensarling at \_\_\_\_").<sup>15</sup> Hensarling testified that, although he was not present for the entire meeting, he recalled McDaniel describing the various components of the MVP, including military base tours by Captain Eugene "Red" McDaniel, a program to send absentee ballots to military personnel, and a "voter guide" concerning military issues. Id. at 181-187.<sup>16</sup> Hensarling testified that he did not recall discussing particular Senate races with ADF at the meeting, and doubted that they would have discussed races with any 501(c) organization on advice of counsel. Hensarling couldn't recall if a contribution from the NRSC was solicited while he was present, but assumed that was the purpose of the meeting. Id.

Despite the July and August timeline for certain MVP activities in ADF's proposal, the NRSC did not make a commitment to give ADF funds at the June 29 meeting. Mike McDaniel

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<sup>15</sup> Paul Curcio also testified to a meeting with ADF but placed it in September. Since the record reflects September meetings between ADF and the NRSC, Curcio's testimony is discussed below.

<sup>16</sup> Though he remembered a discussion of voter guides generally, Hensarling testified that he did not recall discussing with anyone the fact that ADF had actually sent out candidate questionnaires for certain 1992 campaigns. Hensarling at 200.

testified that ADF may have returned with another proposal, and indeed the record reflects additional meetings with the NRSC in September. McDaniel at 125-126.

ADF records evidence another meeting involving McDaniel and Anderson at the NRSC on September 1. See 1992 McDaniel calendar and ADI reimbursement forms (Doc. No. 500829A). During their depositions, neither Anderson nor McDaniel recalled what occurred at this meeting. Paul Curcio, however, testified that he attended a meeting in Jeb Hensarling's office with both McDaniel and his father, Captain "Red" McDaniel, in September 1992.<sup>17</sup> Curcio's recollection was that ADF made a pitch for funds to send absentee ballot requests to military personnel during the meeting. According to Curcio, the McDaniels presented a list of "high military population states" on which ADF's efforts would be focused. Deposition of Paul Curcio at 174-178 (hereinafter "Curcio at \_\_\_\_"). At this point, much closer to the election, NRSC's interest was evidently peaked, because, according to Curcio, a follow-up meeting occurred a couple of weeks later with NRSC Chairman Phil Gramm. Indeed, ADF records reflect a September 25, 1992 meeting with Senator Gramm. See 1992 McDaniel calendar.

Curcio testified that the meeting with Gramm was set up because a request for NRSC funds to run this type of program was out of the ordinary; NRSC staff wanted to make sure Gramm was aware of it and had no "severe objections" to it. Curcio at 177-180. In preparation for the meeting, Paul Curcio drafted a briefing memorandum for Gramm on the MVP,

<sup>17</sup> Hensarling recalls only one meeting with ADF for which he left his own office. His recollection of the meeting participants, i.e., himself, Curcio and Anderson for the NRSC and Mike McDaniel, but not Captain McDaniel for the ADF, is more in accord with Mike McDaniel's recollection of the June meeting.



recommending that NRSC fund the program.<sup>18</sup> The Curcio briefing memo is important for several reasons: it acknowledged a plan to use non-federal funds for GOTV activity to influence Senate elections; it stated that the recommended use of the funds, military voter turnout, arose in part from inquiries from Senate campaigns; it noted that certain defense issues could be used to encourage votes for Republican candidates; and it recommended key states where the NRSC had targeted U.S. Senate races on which ADF's GOTV efforts could be focused. See Undated Memorandum from Curcio to Senator Gramm titled Meeting with Red McDaniel ("Curcio memo")(Doc. No. 120074-120076).

The Curcio memo to Senator Gramm began by briefly describing the MVP, using language and statistics contained in ADF's written proposal, and stated that "[t]his program is unique in that it provides a way for us to use our surplus of corporate dollars to have a direct impact on Senate races." Curcio memo at 1 (120074). Noting that the "motivation for maximizing the military vote for Republican candidates is greater this year," the memo noted that "huge cuts" proposed by Democrats to the defense budget, and Democratic opposition to the Gulf War, "can be used to turn out the military voter for Republican Senate candidates. Properly executed, this program will make them understand their very careers and the future of their families are at stake." Id.

The Curcio memo went on to note that ADF's program was designed to target states with a concentration of military personnel, and listed six "[k]ey states in which the NRSC has targeted U.S. Senate races, and in which this program could make the difference." Curcio memo at 1-2 (120074-75). These NRSC-targeted states were: North Carolina, South Carolina, Idaho,

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<sup>18</sup> Curcio testified that his assistant found the memo in Curcio's files and stated that although he did not recall writing it, he doesn't doubt that he did because it reflects his writing style. Curcio at 194-195.

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Wisconsin, Georgia and Indiana. *Id.* Curcio estimated the cost for a program aimed at the six targeted states to be \$231,624, using figures provided in ADF's June proposal.<sup>19</sup> *Id.* at 120075. The memo also noted that "[v]irtually every campaign that we are involved with has asked one of us what the NRSC is planning to do in order to motivate and turn out the military vote." *Id.* at 120075. Finally, Curcio observed that he had identified "at least several hundred thousand dollars of savings within the corporate budget (state party transfer money)" that could be used to fund the program, and he concluded that the NRSC should seriously consider funding the program if it could be implemented within the time remaining. (Emphasis in original). *Id.* at 120076.

Both Mike and Red McDaniel attended the September 25 meeting with Senator Gramm. Mike McDaniel testified that he thought Gramm had some type of written description of the military voter program. And although he did not recall the specifics of the discussion at that meeting, McDaniel testified that he believed they discussed states and the upcoming Senate elections. McDaniel estimated that the meeting took only 15 minutes, and he did not identify Curcio or Hensarling as meeting participants. McDaniel at 137-142.

Curcio concurred that a follow-up to the earlier September meeting involved both McDaniels and Senator Gramm, but recalled that he and Hensarling also attended. Curcio at 177-178. In fact, Curcio testified that he remembered little else except that the meeting took place at an NRSC conference room. When asked if the NRSC and ADF discussed Senate races at either of the September meetings, Curcio replied. "No, not really. Not really." When asked

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<sup>19</sup> The memo notes that the estimated costs would likely be lower because the costs included sending absentee ballots to overseas military personnel, a project which could not be accomplished in the time remaining.

to explain, Curcio replied that ADF had approached other committees for funding and the proposal was not a "[S]enate-focused thing per se." *Id.* at 183. He specifically denied that they discussed or suggested any particular states on which the NRSC would like ADF to focus its mailings. *Id.* at 183-184. Curcio further claimed that the listing of key states identified in his memo to Gramm was an internal communication to persuade Gramm of the program's usefulness and was not conveyed to ADF. *Id.* at 201-202.

Curcio and Mike McDaniel agreed during their depositions that no funding commitment was made at the September meetings. Indeed, McDaniel testified that he had further communication with the NRSC, urging them to make a decision before he left for a scheduled family vacation the weekend of October 2. And in fact, Anderson called McDaniel on Friday, October 2, the day McDaniel was to leave on his trip, to tell McDaniel that NRSC would be issuing a check. McDaniel picked it up at the NRSC that day and proceeded to his vacation destination. McDaniel at 142-144. For his part, Curcio testified that he and Hensarling discussed making the contribution to ADF after the meeting with Gramm and concluded that increasing turnout would benefit the NRSC's races. Curcio at 184-185. According to Curcio, he understood the money was to be used for a mailing of federal postcard application forms to enable military voters to cast absentee ballots. *Id.* at 190. He denied any discussion with ADF about including a candidate questionnaire and testified that he was unaware that ADF sent mailings with candidate questionnaires *Id.* at 186 and 213.

A critical factor underlying NRSC's choice of ADF as a beneficiary was the NRSC's view that ADF's constituency, military voters, would likely favor Republican candidates. Curt Anderson acknowledged this fact in his deposition, testifying that the view of the Republican party, based on his experience at the NRSC, was that the party has a "better shot at appealing to

[military voters].” Anderson at 265. See also NRSC Coalition Building Manual in the Senate Report, supra, at 6006.

Immediately upon learning of NRSC’s payment, ADF made a Freedom of Information Act request to the Department of Defense to obtain names and addresses of military personnel to use in its direct mailing. Grotta and McDaniel, the latter from his vacation retreat, drafted a candidate questionnaire to include in the mailing. The questionnaire was faxed with a cover letter on October 7 to Democratic and Republican Senate candidates in four of the six states referenced in the Curcio memo as key races targeted by the NRSC -- North Carolina, South Carolina, Wisconsin and Idaho -- as well as to Senate candidates in Oregon and Ohio. See e.g., October 7, 1992 fax transmittal to Chris Crowley at Hartnett for U.S. Senate (Doc. No. 500600-602).<sup>20</sup> The questionnaire contained eight questions on various defense-related issues which required yes or no responses. Three of the questions concerned cuts in defense spending and support for the use of force in the Persian Gulf -- the issues spotlighted in the September 25th Curcio memo as issues likely to turn out the vote for Republican candidates. A ninth question provided space for the candidate’s narrative response to a question about their specific legislative agenda for the military. McDaniel testified that Grotta had made recommendations about the issues to include on the questionnaire. McDaniel at 163.

Although candidate questionnaires were sent to both Republican and Democratic Senate candidates in the six targeted states, the record reflects that ADF made written follow up requests to only three of the candidates to complete the questionnaire -- all Republicans.

<sup>20</sup> According to staff records produced by NRSC, Chris Crowley had been employed at the NRSC sometime in 1992. Curt Anderson opined in his deposition that Crowley had left NRSC’s employ to work full-time with the Hartnett campaign. Anderson at 162.

John Grotta coordinated the production and distribution of the ADF mailing which was sent to about 90,000 military personnel with homes of record in the six targeted states in late October. The final mailing included a cover letter signed by Captain McDaniel, a one page flier containing instructions on contacting Voting Assistance Officers, and the Senate candidate questionnaire. See e.g., 1992 ADI "Defend America Vote" mailing enclosing Idaho Senate candidate questionnaire (Doc. No. 501500-503). The questionnaire enclosed in the mailing contained the respective Republican Senate candidate's name and party affiliation on the top of the page in typeset block letters, followed by a reproduction of the candidate's responses to the questionnaire and the candidate's signature. Below the signature, a ruled off section at the bottom noted, in typeset block letters, the name and party affiliation of the respective Democratic Senate candidate and the phrase "DID NOT RESPOND." (Emphasis in original). Id. at 501502. The cover letter, on ADI letterhead, did not reference any candidates, but instead identified Captain McDaniel as a former Prisoner of War, expounded on the importance of voting, contained a reference to choosing a Commander-in-Chief, and urged the military member recipient to vote on Tuesday, November 3, 1992. Id. at 501501. The one page flier included pictures of the three major 1992 Presidential candidates separated by question marks. Id. at 501503.

In addition to the mailing to military personnel, ADF's GOTV activities also included military base tours by Red McDaniel in two of the targeted states -- North and South Carolina -- and written and video Public Service Announcements sent to bases in the key states. See "ADI News," Winter 1993 (Doc. No. 500461). According to ADI's newsletter, McDaniel met with military personnel on the base tours to encourage them to vote in the general election. The video and print PSAs distributed to military bases featured Captain McDaniel introducing himself as a

former Prisoner of War who had been unable to vote and exhorting the audience to "Defend America" by voting. In the video PSA, McDaniel asked military members to "please remember to request an absentee ballot and vote," and noted the date of the upcoming election without referencing any candidates. See "Defend America Vote" print PSA (Doc. No. 501524) and "Military Vote – Public Service Announcement, TV PSA (Doc. No. 501546).<sup>21</sup> The video PSA was also sent to local commercial television stations near targeted military bases. According to ADF's interrogatory response, the 1992 general election video PSA was produced at the studios of the National Republican Congressional Committee without charge.

When questioned in his deposition about why ADF chose to focus on the six targeted states, Mike McDaniel initially testified that he did not remember how ADF had decided on these six states, then testified that ADF used factors such as the MVP budget and the numbers of military personnel in choosing them. When asked whether the NRSC had discussed specific Senate races during the various meetings, McDaniel acknowledged that the NRSC had mentioned races they were interested in and had suggested races on which they would like to see ADF focus its efforts. McDaniel at 156-159. Finally, when asked why ADF chose these states and not others with more military personnel of record, McDaniel responded that ADF chose the six races because "[t]hey were races that the Senatorial Committee were [sic] interested in." *Id.* at 162.

McDaniel's testimony is supported by Curcio's briefing memo discussed above, which specifically mentioned four of the six ADF MVP states as states where NRSC had targeted

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<sup>21</sup> No copy of the 1992 video PSA was produced to the Commission but ADF submitted a copy of a 1994 video PSA script that it said was representative of the 1992 general election PSA except for the date of the election.

Senate races and where the MVP could make a difference. That memo, while itself undated, was likely prepared no more than a month before the NRSC sent its payment to ADF, because records show that ADF made its second MVP presentation to NRSC on September 1 and the Gramm meeting occurred on September 25.

Besides the fact that most of the ADF-targeted states appeared in Curcio's briefing memo, five of the six states -- Idaho, Oregon, North Carolina, South Carolina, and Wisconsin -- had Senate races on which John Grotta and Curt Anderson were working closely. Indeed, Anderson testified that, as the election drew near, he spent most of his time as NRSC regional field director on the North and South Carolina and Wisconsin Senate races. Anderson at 51. Grotta, who worked on the Kempthorne, Packwood and Hartnett races in Idaho, Oregon and South Carolina respectively, while also coordinating ADF's mailing, had also been retained by the NRSC to develop voter files in Idaho and Oregon sometime prior to July 1992.<sup>22</sup> Grotta at 113-114. In fact, Grotta's relationship with the NRSC went beyond voter file development for Idaho and Oregon. Five of the nine express advocacy direct mailings that Grotta produced in support of the Packwood campaign contained an NRSC disclaimer. Moreover, Grotta obtained research from the NRSC in late September which he then used in producing express advocacy mailings for both Kempthorne and Packwood. Grotta at 117. Finally, in the South Carolina race, Grotta produced two direct mailings expressly advocating Republican Tommy Hartnett for

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<sup>22</sup> Grotta testified that he worked directly for the Packwood campaign but that the state parties were his primary clients for work he did on the Idaho and South Carolina Senate races.

the U.S. Senate, mailings in which Curt Anderson was involved.<sup>23</sup> Anderson at 152-155.

Curt Anderson, who met and spoke with McDaniel frequently, testified that he did not recall discussing particular states in which ADF would conduct its GOTV efforts and repeatedly stated that ADF wanted to undertake GOTV activity across the whole country.<sup>24</sup> Anderson at 133-142. However, while ADF did indeed want to conduct GOTV activity across the country, the record shows that ADF tailored its proposal specifically to obtain funding from NRSC. Indeed, the NRSC's eventual \$250,000 payment was a far cry from the \$743,000 25-state effort ADF had proposed to NRSC at the end of June.

Mike McDaniel testified in his deposition that ADF showed the completed MVP mailings to the NRSC, but could not remember when. He also testified that NRSC would have been shown the mailings in connection with a follow-up for future MVP activities. McDaniel at 186-187. Indeed, as discussed below, the NRSC's 1993-1994 Deputy Executive Director, David Carney, testified that in 1993 Captain McDaniel showed him samples of prior ADF mailings. David Carney Deposition at 114-118 (hereinafter "Carney at \_\_").

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<sup>23</sup> Anderson also testified that he would have discussed with the South Carolina state party the voter segments to which the Grotta mailings should be mailed. It appears that these mailings, both of which bear a disclaimer by the South Carolina Republican Party, constituted excessive coordinated expenditures. The NRSC had spent the full coordinated expenditure limit, including the state party's portion, as of September 29, 1992, all but \$2,000 of which was paid to Fabrizio, McLaughlin Associates for media services. Documents produced by Grotta indicate that the South Carolina mailings were mailed sometime after October 18.

<sup>24</sup> Paul Curcio denied suggesting that ADF target its GOTV efforts on specific states. Curcio at 184. Jeb Hensarling expressed doubt that NRSC and ADF had discussed particular races but did not recall if they did. See Hensarling at 181-188. However, Curcio and Hensarling, unlike Anderson, had only minimal direct contact with ADF. Anderson testified that he did not recall any discussions with ADF about whether they actually sent a mailing to military personnel as proposed, and when shown copies of ADF's 1992 mailing, Anderson testified that the specific documents shown him did not seem familiar. Anderson at 143-145.



In summary, the NRSC's knowledge that its non-federal funds would be used for voter turnout is supported by the direct testimony of NRSC's political director, who testified that the October payment was for military voter turnout consisting of an absentee ballot mailing to military personnel, and by all of the circumstances of the payment described above. Moreover while Political Director Curcio did not recall discussing a questionnaire with ADF, Jeb Hensarling testified that ADF had mentioned that a voter guide concerning military issues was part of its program.

The NRSC's more specific knowledge that ADF's voter turnout activities would be targeted to military personnel domiciled in certain key states targeted by the NRSC is supported by both Mike McDaniel's testimony that the NRSC chose to target the six states because "they were races that the Senatorial Committee was interested in," and by more indirect, yet compelling evidence described below.

First, the NRSC made its payment to ADF after it was presented with at least one written proposal to the NRSC describing a voter turnout program targeted to personnel domiciled in key states with U.S. Senate races. The program consisted largely of mailings containing registration and absentee ballot request forms and candidate questionnaires. ADF developed and refined its proposal with input from Curt Anderson, the NRSC's regional field representative, and John Grotta, a direct voter contact consultant who was paid by the NRSC to develop voter files and who simultaneously worked for or on behalf of particular Republican Senate candidates. According to Mike McDaniel, Grotta and Anderson's input included discussions about the states at which ADF could target its voter turnout program. After receiving only a third of its original funding request from NRSC, ADF directed its MVP mailings, containing questionnaires

respectively. Internal NRSC documents show that each check was approved by Executive Director Hensarling and Political Director Curcio. Moreover, the day before each check was issued, Regional Field Director Curt Anderson requested, via two memoranda to Enoch Ebong, Curcio's assistant, that the checks to NRLC and CFA on October 2 and to NRLC and ADF on October 20 be issued. The memos reflect a sense of urgency. In the memo requesting the October 2 contributions, Anderson instructed Ebong, to send the checks to CFA and NRLC by courier or to have the organization pick up the checks. In a handwritten notation, Anderson wrote, "This needs to happen today." In the memo requesting the October 20 checks, Anderson instructed Ebong, "Don't mail these. Call the organizations and have them pick them up."

The National Right to Life Committee, Inc. is a District of Columbia-based non-profit corporation which promotes and supports pro-life issues and which is exempt from federal income taxation under 26 U.S.C. § 501(c)(4). The NRLC is governed by a Board of Directors composed of elected representatives from each of its 50 state affiliates and the District of Columbia, three at-large-directors and an honorary board member. During the relevant period, the NRLC's day to day operations were overseen by Executive Director Dr. David O'Steen who was assisted by Associate Executive Director Darla St. Martin. Jacki Ragan served as the NRLC's Director of State Organizational Development where she assisted the NRLC's 50 state affiliates and their local chapters. Carol Long served as the Director of NRLC's separate-segregated fund, the National Right to Life Political Action Committee ("NRL PAC"), although as an NRLC employee, she also had other duties.<sup>25</sup>

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<sup>25</sup> Each of these individuals still served in these positions at the time of their depositions.

Among its many activities, the NRLC conducts three that are relevant to the present matter. It endorses candidates, operates a Voter Identification Project, and conducts what it refers to as "nonpartisan GOTV" or "voter education" phone calls in connection with federal elections. In addition, the NRLC maintains a separate segregated fund, NRL PAC, through which it makes contributions to, and independent expenditures on behalf of, or in opposition to, federal candidates.

According to PAC Director Carol Long, candidate endorsements require agreement by both the NRLC and the director of the NRLC state affiliate in which the relevant election occurs. Carol Long Deposition at 29 (hereinafter "Long at \_\_\_"). The NRSC Manual reflects the NRSC's knowledge that both the NRLC and the state affiliates play a role in candidate endorsements and candidate contributions. See Senate Report at 6009.

NRLC's Voter Identification Project ("VIP") is a nationwide phone survey primarily conducted through NRLC's state affiliates using voter registration lists, with sample scripts and training materials provided by the NRLC. The VIP is coordinated through the NRLC's VIP Office in Alton, Illinois. Through the VIP, the NRLC and its state affiliates identify voters who are pro-life, undecided, and pro-choice, and determine whether a voter will vote against a candidate who supports abortion or against a candidate who does not support abortion. The VIP phone scripts also include a question seeking the predominant party affiliation of the voters in surveyed households, although some of the voter registration lists used to make these calls already contain this information. See Deposition of Jacki Ragan at 35-38, 44-45 (hereinafter "Ragan at \_\_\_"), NRLC pamphlet #3, "Thank You to a Very Important Person: the VIP Volunteer" and "NRLC, Inc. Voter Survey Project Form A" (Doc Nos. 200310-317 and 200301). NRLC VIP materials note that the program "identifies voters who will vote for pro-life

candidates" and "allows pro-life supporters to be contacted during get-out-the-vote drives" See NRLC pamphlet #1, "You Can Make the Difference" (Doc. No. 200274-279).

In 1992, the NRLC also embarked upon a Computerized Voter Identification Program through which the NRLC provided state affiliates with a personal computer, a monitor, software, a modem, and headsets to conduct voter identification surveys using rented lists of registered voters. According to Jacki Ragan, data collected through this limited program was sent to the NRLC.

Finally, through its "non-partisan" GOTV or "voter education" calls, the NRLC finances phone banks to call identified pro-life voters to urge them to vote in a particular race and to relay information about the positions of named candidates in that race on certain abortion issues. By contracting with campaign software and database development companies, the NRLC also has the ability to target these phone calls to specific legislative and congressional districts within a state. When conducting such calls, the NRLC would sometimes request lists of identified pro-life voters from state affiliates.

In his deposition, David O'Steen testified that, as Executive Director in 1992-94, he made NRLC managers aware of the range of funds available to conduct "nonpartisan" GOTV and was aware himself where GOTV calls were being made and the approximate costs of these projects. O'Steen at 24-25 and 174-175. Key NRLC employees such as O'Steen, St. Martin, Ragan and NRLC PAC Director Carol Long had primary responsibility for specific states and would sometimes be involved in "nonpartisan" GOTV activities for their "assigned states." See Long at 48 and 87, Ragan at 143-145, O'Steen at 17-20.

In 1992-94, David O'Steen and Darla St. Martin also had supervisory responsibilities over NRL PAC and oversaw some of the administrative details of that committee. NRL PAC

Director Carol Long also had dual responsibilities, serving as the Director of NRL PAC but also working on other projects for the NRLC. In their respective roles, Long, O'Steen and St. Martin attended fundraisers, met with candidates and their campaigns and spoke to campaigns and party committees about contributions to candidates. Each also acknowledged attending fundraisers at the NRSC. See Long at 33-35, O'Steen at 56, 121 and Deposition of Darla St. Martin at 37-38, 59-60 (hereinafter "St. Martin at \_\_"). Moreover, Long and O'Steen prepared the NRL PAC budget and consulted about which candidates the PAC should support. Long at 21, 49. At various times, when engaged in activities directly supporting or opposing federal candidates, Long, O'Steen, St. Martin and other NRLC employees were paid directly by the NRL PAC. Long at 16-17, O'Steen at 20, St. Martin at 26-28. Accordingly, many of the same key NRLC officials involved in directly supporting candidates through the NRL PAC also had roles in conducting NRLC-financed, assertedly nonpartisan GOTV phone banks.

The evidentiary record shows that there were at least five scheduled meetings in the first six months of 1992 between the NRLC and the NRSC, most involving Curt Anderson. See David O'Steen's 1992 calendars (Doc No. 200129-200132). Although most of the individuals deposed testified that they could not recall specific meetings between the organizations in 1992, David O'Steen testified that he met with Curt Anderson an unknown number of times, including one or more meetings with Anderson and Political Director Paul Curcio, one with Anderson and Jeb Hensarling, and one with Anderson and John Grotta. O'Steen testified that the primary purpose of these meetings in his view was to solicit contributions from the NRSC.<sup>26</sup> O'Steen at 26-33. In his affidavit, which was supplied prior to his deposition testimony, O'Steen averred

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Both Curcio and Hensarling testified that they did not recall meeting with O'Steen in 1992.

that some of his solicitations of the NRSC may have taken place on the dates of four of his scheduled meetings with the NRSC.

Darla St. Martin also acknowledged meeting with the NRSC over the years and asking them for contributions. Although she testified she met with Hensarling and Curcio at some point, she could not recall particular meetings in 1992.<sup>27</sup>

In addition to presenting the NRLC with the opportunity to solicit contributions from the NRSC, the record shows that the NRSC/NRLC meetings permitted the NRSC to gain direct knowledge about the candidates the NRLC was interested in supporting and about the NRLC's activities, including its voter identification program and "nonpartisan" GOTV calls. The meetings also permitted the NRSC to share its views of the races with the NRLC.

First, an internal NRLC memo indicates that at a luncheon meeting in late January 1992, Curt Anderson and high-level NRLC staff discussed candidates running for the Republican nomination for Senate in specific states. See January 30, 1992 Memorandum from Carol to David, Darla and Jacki re: Follow up to Meeting with Curt Anderson (Doc. No. 200255-258). According to the memo, the discussion included such topics as which candidates were pro-life and the ability of a Republican candidate to raise sufficient funds. Anderson also gave the NRLC at this lunch meeting a list of candidates seeking Republican Senate nominations with addresses and phone numbers that he promised to update later.

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<sup>27</sup> Curcio testified that he did not meet with Darla St. Martin. Curcio at 79. Hensarling believes he may have met Darla St. Martin, but doesn't remember meeting or speaking with her prior to the date when NRSC made its 1992 contributions to the NRLC. Hensarling at 158-159.

Second, shortly thereafter, on or about February 4, 1992, Anderson and former NRSC Director of Voter Contact Services John Grotta<sup>28</sup> met with David O'Steen and NRLC Outreach Director Ernie Ohlhoff at the NRLC. As NRLC's Outreach Director, Ohlhoff had knowledge of the various mailing lists available to the NRLC and was NRLC's source for computer and technical questions. Although O'Steen testified that he viewed the purpose of the meeting as an opportunity to solicit contributions from the NRSC,<sup>29</sup> he also acknowledged knowing that Grotta had computer expertise and vaguely acknowledged a computer-related aspect to the meeting. O'Steen at 47-52. At the time of the February meeting, John Grotta was no longer employed by the NRSC and had started his business specializing in direct voter contact.<sup>30</sup> In fact, documents obtained in the investigation show that a few days before the NRLC meeting, Grotta sent a memo to the NRSC proposing that he be retained by the NRSC as a voter list development consultant.<sup>31</sup> See January 30, 1992 memo to Curcio and Hensarling from Grotta re: List Development Proposal (Doc. No. 550002-550003). Documents also show that within a month after the February meeting with Grotta and Anderson, the NRLC had begun embarking on a computerized version of its voter identification program. See e.g., "Notes: Phone Call - Mary Ann Ohlhoff 3/24/92" (Doc. No. 600052-54) and 3/92 O'Steen calendar. O'Steen's testimony and the identity

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<sup>28</sup> As previously noted, Grotta and Anderson also met the following month with ADF.

<sup>29</sup> The February 4, 1992 meeting with Grotta and Anderson is not listed in the O'Steen affidavit as a meeting at which he may have solicited funds from the NRSC.

<sup>30</sup> Both Grotta and Anderson testified that they did not remember meeting with the NRLC together, although Grotta acknowledged he may have contacted NRLC to gain access to a list from its Missouri state affiliate for a nonfederal race he was working on.

<sup>31</sup> According to Grotta, his proposal did not result in a general consultant position with the NRSC although he did develop voter files for Idaho and Oregon for them. Grotta at 111-114. As noted earlier, Grotta also worked on the Republican Senate races in those states and also did mailings on behalf of the Republican Senate candidate in South Carolina, a campaign in which Anderson was heavily involved.

of the participants suggests NRLC's voter identification program may have been a topic at the meeting with Grotta and Anderson.

Third, David O'Steen's calendar reflects another meeting with Anderson on February 25, 1992 at the NRSC. Although neither Anderson nor O'Steen remember specific meetings with one another, an NRSC "1992 PAC Briefing" report bearing that same date and a second NRSC report entitled "'92 Campaign Report" dated February, 1992 were among the documents produced by the NRLC. Those documents contain information about each 1992 Senate race, the Republican and potential Republican candidates for each, fundraising goals for many Republican incumbents, polling information and an outlook for each race such as those that represented opportunities for Republican gains. See "PAC Briefing, Chairman's Report, February 25, 1992" and "'92 Campaign Report - NRSC" dated February 1992 (Doc Nos. 300006-60 and 300061-67).

Finally, in an affidavit supplied before his deposition, O'Steen averred that the substance of his meetings with the NRSC was to solicit contributions "to further the general purposes of the [NRLC] such as building NRLC's base of support, adding to [the NRLC's] list of identified pro-lifers, publishing candidate surveys and non-partisan get-out-the vote efforts." In his deposition testimony, O'Steen further explained that his meetings with the NRSC included discussions about the Senate races generally, about which candidates the NRLC thought were pro-life, and the advantages of a candidate being pro-life. O'Steen also testified that at times in such meetings he would also show data showing the success of pro-life candidates in past elections. O'Steen at 31-32, 41. Although O'Steen testified that he would not have discussed specific GOTV activities with the NRSC, he stated that the fact that the NRLC conducts "nonpartisan" GOTV phone calls is "well known." O'Steen at 38 and 54. See also Anderson



193-195. Indeed, the NRSC's October 1995 interrogatory responses in this matter indicate that, in its requests for NRSC contributions, the NRLC generally indicated that it would be making non-partisan voter turnout telephone calls to its members.

When asked what kind of response he received to his solicitations of the NRSC, O'Steen stated that his impression was that Curt Anderson wanted to see the NRSC make contributions to the NRLC, but that often NRSC did not have funds available or know whether funds would be available when NRLC made its requests. O'Steen at 44-45.

Around the same time O'Steen was seeking funds from the NRSC and meeting with Anderson, the NRLC was actively involved in the 1992 Presidential election campaign. Indeed, NRLC had publicly endorsed President Bush for reelection on March 2, 1992 and top NRLC officials, including O'Steen, St. Martin, NRLC President Wanda Franz and then NRLC Vice President Robert Powell attended a five-minute photo opportunity at the White House. St. Martin at 68-69 and Ralph Z. Hallow and Frank J. Murray, *Momentum is Goal on Junior Tuesday in Georgia; Buchanan Says He'll Bury Bush*, Washington Times, March 3, 1992 at A1. Thereafter, O'Steen's calendar reflects an April 7 meeting with Robert Heckman, Deputy Director of National Coalitions for the Bush/Quayle campaign, several days after a scheduled meeting at the NRSC. Other information obtained by this Office indicates that NRLC President Wanda Franz, then-Vice President Robert Powell, and a 1992 NRLC board member from Florida were co-chairs and vice chairs of a Bush Quayle steering committee called "American Families for Bush/Quayle." Moreover, a June 1992 list of suggested GOTV projects entitled "Outside Programs/Proposals" prepared by the Bush/Quayle campaign contains a reference to "Right to Life" for a project involving "voter guides, etc." at an estimated cost of \$1,000,000. Also

included on this list are two of the other recipients of the NRSC's 1992 non-federal payments, CFA, and "Right to Work." See 6/3/92 "'Outside' Programs/Proposals" (Doc. RF 000017).

Despite what appear to have been ongoing appeals to the NRSC for funds, the NRSC gave non-federal funds to the NRLC only one month before the election, even though the NRSC's disclosure reports show significantly larger cash-on-hand available in NRSC's non-federal account in the months prior to October.<sup>32</sup> This fact suggests an election-related component to the payments, a fact supported by NRSC Political Director Paul Curcio's testimony. Although Curcio characterized his involvement in the payments as limited to approving the paperwork, he testified that the 1992 payments to NRLC were for voter turnout. Curcio at 73. He also indicated that he briefly discussed making such contributions with Curt Anderson and NRSC Executive Director Jeb Hensarling.<sup>33</sup> Id. Curcio also acknowledged that, although more pro-life voters are nominally Democrats, "on that particular issue, our presumption was higher turnout is - helps the party, helps us." Curcio at 76.

David O'Steen testified that he did not specifically recall how the October contributions were used, other than for "general activities." O'Steen at 82-83. However, NRLC's Director of State Organizational Development Jacki Ragan testified that David O'Steen mentioned to her in 1992 that the NRLC was going to request funds from the NRSC. When funds were received,

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<sup>32</sup> NRSC disclosure reports show that throughout the first six months of 1992, when O'Steen's calendar reflects meetings with NRSC employees, the NRSC's non-federal account balance varied between \$3.4 and \$5.6 million dollars.

<sup>33</sup> Curt Anderson testified that he received solicitations from the NRLC and argued that they should be made, but he did not recall specific discussions. Anderson at 202-203, 210. Jeb Hensarling testified that he did not know why the NRSC made contributions to the NRLC in 1992 even while acknowledging that he approved them. Hensarling did not contradict Curcio's statement, however. Rather, he testified, that as a general matter, requests for funds from outside groups would be made through Curcio and that factors such as a group's purpose and "historic activities" would inform the NRSC's decision as to whether an expenditure was worthwhile. See Hensarling at 125, 160-165, 172 and 176.

Ragan testified that she "vaguely" recalled internal NRLC discussions about spending "parts of" the funds for "nonpartisan" GOTV activity and discussing what state voter lists were available. Ragan at 57-61. Ragan was then asked to gather lists of identified pro-life supporters to conduct GOTV and did so for whatever state was requested, although Georgia was the only state for which she recalled providing lists. Ragan at 67-72, 85. Indeed, as Ragan recalled, the record indicates that following receipt of the NRSC's October 1992 payments, the NRSC conducted "nonpartisan" GOTV phone calls referencing the 1992 Presidential candidates in 14 states, including Georgia.<sup>34</sup>

Two substantially similar scripts were used for NRLC's GOTV phone calls, one for the day before and the other for the day of the election. See NRLC scripts dated 10/30/92 and 11/2/92, "National Right to Life Get Out to Vote - C4" (Doc Nos. 200407 and 200408). Both scripts opened with the caller asking for an individual by name, or, if the named individual was not available, with an inquiry into whether the callee was of voting age. Both scripts then stated:

The only pro-life candidate for President is George Bush.  
Both Clinton and Perot support UNLIMITED abortion and TAX  
FUNDING of abortion.

George Bush OPPOSES tax funding of abortion and FAVORS  
protecting unborn children. (Emphases in original).

The scripts ended with an exhortation to either "Please vote on Tuesday" or "Please vote today."

Id.

The above script, aimed at identified pro-life supporters, was clearly intended to turn out voters favorable to the NRLC-endorsed Republican candidate for president. Moreover, those

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<sup>34</sup> According to NRLC's interrogatory responses, the fourteen states were Alabama, Connecticut, Florida, Georgia, Illinois, Kentucky, Louisiana, Maine, New Hampshire, New Jersey, New Mexico, Oklahoma, Pennsylvania and Texas.

pro-life supporters may have also voted for any pro-life Senate candidates on the ballot in the targeted states.

Paul Curcio's testimony that the NRSC's October 1992 non-federal funds were given to the NRLC to turn out voters who, the NRSC believed, would benefit Republican candidates in a general election that included federal candidates is supported by the NRLC's actual use of the funds and Jacki Ragan's testimony that NRLC internally discussed using some of the non-federal contributions for "non-partisan" GOTV phone calls. Consequently, the NRSC's payment to NRLC for GOTV activities should have been comprised of at least 65% in federal funds. No federal funds were used.

**c. October 1992 Payment to Coalitions for America**

Following the same pattern, the NRSC made another non-federal payment to a third nonprofit organization on October 20, 1992. This payment, like the 1992 payments to other recipients, was accompanied by a cover letter signed by Paul Curcio stating that the funds were for CFA's "Good Government Activities." The non-federal payment to Coalitions for America was used, in part, to indirectly finance communications to encourage voter turnout in support of Republican candidates. As noted above, documents produced by NRSC show that Curt Anderson requested that the check for CFA be issued and picked up by CFA. The NRSC check request form shows that Jeb Hensarling and Paul Curcio approved issuance of the check which is described on the accompanying check stub as a "transfer."

CFA is a District of Columbia non-profit corporation exempt from federal income taxes under 26 U.S.C. § 501(c)(3). In 1992, in addition to sponsoring leadership meetings and making grants to conservative organizations, CFA also sponsored limited viewer television programs featuring leaders of conservative groups discussing national legislation and issues of the day.

On the same date as the NRSC's non-federal payment to CFA, CFA sent a \$25,000 check to the National Right to Work Committee ("NRTWC").<sup>35</sup> See CFA Check No. 1452 dated 10/20/92 to NRTWC (Doc. No. 450009). Records show that the NRTWC allocated these funds to its Federal Survey Program. See Maureen Fallon Note and "Misc. Deposits" log, Doc Nos. 450007 and 450008. This program involved the mailing of surveys to federal and state candidates seeking their positions on certain right-to-work issues, and then the sending of completed copies of the surveys to NRTWC members and supporters together with letters concerning the survey results that encouraged members to contact candidates about right-to-work issues.

Internal NRTWC records also show that about the time it received CFA's check, the NRTWC added a Federal Survey mailing concerning the Wisconsin Senate candidates to a prior production of seven similar mailings begun the week before.<sup>36</sup> See e.g., NRTWC 10/20/92 Purchase Orders and 10/20 Production Approval/Proofing Check Off sheet (Doc. Nos. 451321 and 451335-336 and cf. NRTWC 10/13/92 Purchase Order and 10/13/92 Production

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<sup>35</sup> The day after it received NRSC's check, CFA also made a \$75,000 contribution to League of Catholic Voters, an organization that shared the same address as CFA and was headed by an individual who chaired one of the coalition groups that regularly met at CFA. NRTWC and LCV were the only organizations who received significant funding from CFA in 1992. See CFA's 1992 Form 990, Schedule 4 (Doc. No. 400048).

<sup>36</sup> Around the same time, the NRTWC also produced a fundraising mailing to its members and supporters in five states with Senate elections enclosing ads it was running in those states and seeking funds to pay for the ads. The letter and the ad characterized Governor Clinton and the Democratic Senate candidates in each targeted state as doing the bidding of "Big Labor" and warned that they would overturn or weaken laws favored by NRTWC. The letter and ads mentioned the upcoming elections obliquely by statements such as "Organized Labor seems poised to buy a lock grip over the U.S. Senate" and "If Organized Labor takes control over both the White House and Congress," right-to-work laws are in jeopardy. The ads enclosed with the mailing urged readers to "tell Bill Clinton [and the Democratic Senate candidate] Hands Off the Freedom and Jobs of [the targeted state's] Citizens."

Approval/Proofing Check Off sheets (Doc. Nos. 451088, 451290, 451294, 451298, and 451304). The prior seven mailings were dated October 23, 1992 while the Wisconsin mailing was dated October 26, 1992. See e.g., 10/23/92 Larson letter (Doc No. 450786-787) and cf. 10/26/92 Reed Larson Letter to "Dear Wisconsin Member" ("1992 NRTWC Wisconsin Mailing" (Doc No. 450822-827). Additionally, while the Senate candidates referenced in the earlier seven mailings had been the subject of earlier targeted mailings by NRTWC, Wisconsin Senate candidates had not.

Wisconsin was one of Curt Anderson's assigned states and the campaign of Republican Bob Kasten was one of the races that Anderson testified he was particularly focused upon as the general election drew closer. He characterized the campaign as "desperate." Anderson at 51-54. Anderson also testified that, in his role as field director, he had had discussions with Kasten's Senate campaign manager about the campaign's strategy and message and about what the NRSC could do to help. Id. Wisconsin was, as discussed above, also one of the states targeted in ADF's GOTV mailings. As of the date of the NRSC's check to CFA, the NRSC had spent 85% of its total coordinated expenditure limit for the Wisconsin Republican Senate race. It exhausted this limit six days later.

The NRTWC 1992 Wisconsin mailing, sent to members and supporters in that state, clearly identified the two candidates in the Wisconsin Senate race by name and made reference to them in terms of their status as candidates. Id. (Doc. No. 450822-827). The mailing generally portrayed Democratic U.S. Senate candidate Russell Feingold as hostile to right-to-work legislation, expressed concern about "how State Senator Russell Feingold will vote on compulsory-unionism legislation if he becomes Wisconsin's next U.S. Senator," remarked that "[i]f as a U.S. Senator, Russell Feingold continues to hand forced unionism powers to Big Labor,

Wisconsin will suffer,” and noted that “Mr. Feingold’s record clearly indicates that he could be counted on to back his pals in Big Labor.” See *id.* at 450822. (Emphasis in original). In contrast, the same communication described “Mr. Feingold’s opponent,” Republican Robert Kasten, as being “generally in favor” of right-to-work laws and as “almost always vot[ing] for Right to Work in the U.S. Senate,” although it also criticized Kasten’s support for a specific piece of proposed legislation. *Id.* at 450823. The communication requested that the recipient call the Democratic candidate and “urge him to repudiate his support for forced unionism,” and call the Republican candidate to “urge [him] to reconsider his support for the Hatch Act repeal.” *Id.* A candidate survey listing the positions of Wisconsin federal candidates on Right To Work issues was included in the mailing; this survey reported responses from only the Republican candidates. *Id.* at 450824.

CFA also sponsored a segment of a regularly scheduled program entitled “Family Forum Live,” broadcast on satellite television, that aired on the date CFA received NRSC’s \$50,000 check. A videotape of two installments of the program showed that it featured rotating hosts who interviewed guests about legislation or issues in front of a small studio audience in Washington, D.C. The hosts were individuals active in conservative groups; the guests included members of Congressional staffs and individuals associated with conservative groups and causes such as the National Right to Life Committee and the Heritage Foundation. Discussions featured a conservative slant and centered around topics such as anti-abortion legislation, and a ban on homosexuals in the military. The October 20<sup>th</sup> segment was generally critical of a possible Clinton/Gore administration and “the Democratic Congress,” although it did not expressly advocate the election or defeat of any clearly identified candidates.

The NRSC's former Political Director Paul Curcio, who approved the making of the \$50,000 payment to CFA on October 20, testified that it was for voter turnout. Curcio at 219-220; 223. Curcio was unable to recall the specifics of this payment during the deposition, or indeed anything about CFA, but testified that he would not have approved the payment to any organization without information about who they were or "their objective." See id. at 219-224.

In contrast to Curcio, Curt Anderson testified that he could not recall his role in the payment to CFA despite having requested that the check be issued. Anderson at 170. Anderson, who ran CFA in the mid-1980s and who knew CFA President Eric Licht from that time-period, testified that Licht often approached him for contributions for CFA, but claimed not to recall whether Licht ever said why he wanted a contribution. Anderson at 171, 175-177. He also did not recall any "specific conversation" with Eric Licht about the 1992 elections or any discussion with Licht about CFA wanting to give grants to other organizations. Id. at 177.

Anderson acknowledged that he was familiar with NRTWC and its president, Reed Larson, in part because NRTWC members had attended CFA meetings of "like-minded" groups when Anderson ran that organization. However, he could not recall anybody at the NRTWC asking him for a contribution and could not recall discussing the 1992 elections or any activities NRTWC intended to undertake in 1992 with Reed Larson. Anderson at 177-179.

CFA's interrogatory responses, sworn to by CFA President Eric Licht, stated that Licht "from time to time asked Mr. Anderson if NRSC would donate to CFA inasmuch as CFA understood that NRSC had made various donations and CFA always could use further funds for CFA's grants to conservative entities." In his deposition testimony, Licht confirmed that he often solicited Anderson for contributions and stated that he had asked Anderson "if it was possible they could give me a contribution because other groups were getting contributions."



Deposition of Eric Licht at 96 (hereinafter "Licht at \_\_\_\_"). However, Licht testified that he did not ask for money from the NRSC for a particular purpose and did not remember mentioning to Anderson the possibility of CFA making a grant to the NRTWC. Licht at 47, 98-99.

Licht further testified that, prior to the receipt of the October 20 payment from the NRSC, he spoke by phone with Paul Curcio who told him that the NRSC had money available. Licht also testified that Curcio did not specify how the money should be used other than the statement in NRSC's cover letter that the payment was to be used for "good government activities under the charter" and not to influence a federal election. Licht at 43-45; 100.

Concerning the CFA payment to the NRTWC on October 20, 1992, Licht claimed that no one from the NRTWC approached him for funds; that he simply sent the check to them because he thought that "they are a good organization and do good work," and that there was no particular significance to the date of the contribution other than money was available. He did not remember sending a cover letter with the check to NRTWC. Licht further testified that he did not remember any telephone conversations with an NRTWC representative about use of the funds; and that he did not ask for any kind of feedback about its use. See Licht at 52-55. When asked whether anyone from the NRSC asked CFA to make a contribution to NRTWC, Licht testified that he did not know and did not remember "anything like that." Id. at 104.

Paul Curcio's testimony that the \$50,000 non-federal check given to CFA in October, 1992 was for voter turnout is supported by the circumstantial evidence of CFA's immediate transfer of funds to NRTWC and NRTWC's apparent addition of a mailing concerning the Wisconsin Senate election on which Curt Anderson was working. Moreover, the 1992 NRTWC Wisconsin mailing tied the Democratic Senate candidate to positions likely to be unpopular with NRTWC supporters, the targeted audience. The testimonies of Licht and Anderson do not

contradict Curcio.<sup>37</sup> In fact, Licht's testimony that he spoke to Curcio about the contribution at least explains why Curcio may have remembered the purpose of the funds even if he could not recall much else about it.

The NRSC/CFA/NRTWC transaction fits the pattern of the other NRSC October 1992 contributions, i.e., non-federal payments to groups which then conducted voter turnout activity that focused on federal elections. Moreover, it should be noted that the only time CFA made grants to NRTWC in 1992 was when it had received funds from the NRSC.

NRTWC's 1992 Wisconsin mailing clearly identified the Wisconsin Senate candidates, mentioned them in terms of their status as candidates, was disseminated within the week prior to the election after NRTWC received funds from CFA, and was targeted to an audience likely to be hostile to the position attributed to the Democratic candidate. Thus, at a minimum, the mailing constituted issue or legislative advertising which, if paid for by a party committee, would have been allocable by that committee. Had the NRSC produced the communication directly, it would have had to pay for at least 65% of the costs with federal funds. No federal funds were used.

## **2. 1992 Georgia Runoff Activity**

As the preceding discussion illustrates, during the 1992 general election the NRSC engaged in a systematic pattern of funding outside organizations with non-federal money for the purposes of electing candidates, including Republican candidates for federal office. As is next discussed, this pattern continued into subsequent elections.

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<sup>37</sup> Moreover, Licht's testimony that Curcio never specified how the money should be used other than to state in the cover letter that the check was to be used for "good government activities" is not inconsistent with the two having discussed using the funds for voter turnout, if both believed such a use constituted "good government activities."

At the conclusion of the 1992 general election, the U.S. Senate seat in Georgia remained open because none of the candidates had received a majority of the vote as required under Georgia law. Thus, a runoff between the two highest vote-getters, incumbent Senator Democrat Wyche Fowler and Republican candidate Paul Coverdell, was scheduled for November 24, 1992. One other race was on the November 24 ballot – a partisan state election for Public Service Commissioner.

Voter turnout, always an important factor in a special election, was especially critical for the Georgia U.S. Senate runoff. The general election returns for the Georgia U.S. Senate race had been extremely close, with Fowler receiving 49% of the vote, Coverdell, 48% and a Libertarian candidate, 3%. Moreover, the election was scheduled only three weeks after the general election and time to mobilize election-weary voters was short. A win by Democratic incumbent Fowler would result in a one-seat Democratic gain in the Senate shortly after Republicans had lost the presidency.

The NRSC marshalled its resources to raise money for, and otherwise assist, Republican Senate candidate Paul Coverdell's campaign. NRSC Chairman Phil Gramm, Executive Director Jeb Hensarling, Political Director Paul Curcio and various other NRSC staff members all traveled to Georgia to work on the campaign at various points during the three week-runoff period. Paul Curcio, in particular, spent between 8 and 9 days at Coverdell's Georgia campaign headquarters during the runoff period, including the week before the election. Although Curcio testified that his focus was principally on the campaign's media advertising, he also had contacts with the campaign's pollster, including discussions about how Coverdell was doing among pro-life and pro-choice voters. Curcio at 227-233. Senator Gramm made at least two trip to the

states to campaign on Coverdell's behalf and Jeb Hensarling testified that he traveled to Georgia for about three days, probably the days before the election. Hensarling 83-84.

The RNC, too, had a presence in Georgia. David Carney, who would become the NRSC's Deputy Executive Director in 1993 and who had just finished working on the Bush/Quayle presidential campaign, traveled to Georgia on behalf of the RNC with another RNC staffer. Carney testified that the state and national party committees operated a "pretty big" operation aimed at turning out the Republican voter base, and indeed, according to Curcio, the other RNC staffer was assisting the campaign with GOTV mail. Carney at 232-242 and Curcio at 232. Carney testified that he reported on the status of the race to RNC chairman Rich Bond and helped get national surrogates, such as Barbara Bush, into the state to campaign for Coverdell. He also testified that he spoke to Curcio every day. Carney at 233-235.

Although the NRSC provided staff to assist the Coverdell campaign, it had no ability to assist the Coverdell campaign directly with federal funds because it had already exhausted its contribution and coordinated expenditure limitations during the general election. The NRSC sought to remedy this situation by requesting an advisory opinion from the Commission within a few days after the general election seeking to determine whether it could make additional coordinated expenditures, totaling \$535,000, on behalf of Coverdell.<sup>38</sup> In the meantime, the NRSC had a strong incentive for using non-federal funds to help turn out Republican voters. While awaiting a Commission response to its advisory opinion request, on November 10, the NRSC transferred \$130,000 in non-federal funds to the Georgia Republican Party which was

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<sup>38</sup> As noted in footnote 11, supra, the Commission was unable to approve an advisory opinion by the requisite four votes.

conducting a voter turnout operation along with the RNC. According to news reports, the NRSC's non-federal transfers were used to help pay for GOTV mailings supporting the Republican candidates in the runoff. Mark Sherman, *Soft Money Aided GOP in Runoff; National Groups Gave Directly to State Party*, Atlanta Journal and Constitution, December 2, 1992 at C6. See also Curcio at 325-326. During the same period, the NRSC made a total of \$115,000 in non-federal payments to ADF, CFA and NRLC. The specific amounts and dates of NRSC's nonfederal payments were: \$30,000 to ADF on November 10, 1992, \$40,000 to CFA on November 11, 1992 and \$45,000 to NRLC on November 17, 1992.

Just as the NRSC's nonfederal transfers to the Georgia Republican Party aided GOTV efforts for the Republican runoff candidates, so did its nonfederal payments to the nonprofit organizations. As discussed more fully below, immediately after receiving the NRSC's funds, ADF and the NRLC undertook activities aimed at turning out military members and pro-life supporters for the Georgia runoff. Additionally, both the NRLC and CFA used some of the NRSC funds to make contributions to other groups: the Christian Coalition, the Georgia Christian Coalition, and the NRTWC. All three of the latter groups were actively involved in motivating supporters to turn out for the Georgia runoff.

Despite the importance of the Georgia Senate runoff to the NRSC, the fact that it was the only national election occurring at the time, and the fact that one or both signed the checks or the internal NRSC check request forms approving the payments, neither NRSC Executive Director Jeb Hensarling or Political Director Paul Curcio could recall during their depositions, what prompted the November payments to ADF or CFA. Hensarling similarly testified that he did not know why the NRSC made its November payment to NRLC. Paul Curcio, however,

acknowledged in his deposition that he was aware that all 1992 payments to NRLC were for voter turnout. Curcio at 309.<sup>39</sup>

Curcio's acknowledgment that the 1992 payments to the NRLC were for voter turnout together with the timing of the payments, the importance of turnout in the runoff election, the fact that the NRSC could not use federal funds to directly support Coverdell at the time the payments were made, and the fact that the payments were made to the same recipients who had received non-federal payments for voter turnout just a month before, all strongly support the conclusion that the NRSC made the November 1992 payments to the three nonprofit groups with the understanding that they would be used to turn out voters for the Georgia runoff election in general and for the Republican Senate candidate in particular. As discussed below, the testimony of officials from two of the non-profits, ADF and NRLC, and the actual use of the funds by those organizations further corroborates that conclusion.

**a. November 1992 Payment to American Defense Foundation**

NRSC made a payment of \$30,000 to the ADF on November 10, 1992, just two weeks before the Georgia runoff. In his deposition, former ADF Executive Director Mike McDaniel acknowledged that the \$30,000 NRSC check was to turn out the military for a special election in Georgia. McDaniel at 202-203. John Isaf, ADF's Public Affairs and Program Director also testified that he "presume[s]" the check was to conduct a military voter program for the Georgia runoff. John Isaf at 151 (hereinafter "Isaf at \_\_").

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<sup>39</sup> Curt Anderson, who had directed that the October 1992 payments be delivered to the three groups, testified that he was "not really" involved in the Georgia runoff and that he did not know whether the November payments to the three groups were to fund activities in connection with that election.

Although both acknowledged that the November payment from the NRSC was for the MVP, neither Isaf nor McDaniel recalled any discussions or meetings with the NRSC leading up to the payment. Isaf did observe during his deposition, "I presume something took place because they just didn't send us a check out of the blue." Isaf at 152. Unlike most of the other NRSC payments at issue in this matter, neither ADF nor NRSC produced a cover letter for the November check to ADF, and Mike McDaniel testified that he did not recall if he picked up the check or if a cover letter accompanied it.

According to ADI's Winter 1993 newsletter, ADF's MVP activities for the Georgia runoff included the production and airing of a radio ad which was broadcast on radio stations in six markets close to military bases, the production of a video Public Service Announcement ("PSA") which was sent to military bases for broadcast on closed circuit television and to commercial television stations, and a tour by ADF President Captain Eugene "Red" McDaniel to several Georgia military bases.<sup>40</sup> In ADF's radio ad, Captain McDaniel introduced himself as a 27-year retired Navy veteran and a former Prisoner of War and urged members of the armed services to "please remember to vote on Tuesday, November 24<sup>th</sup> in Georgia's runoff election." See "Military Vote – Public Service Announcement, GA Radio" script. (Doc. No. 500281).<sup>41</sup>

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<sup>40</sup> ADF also planned a mailing to military personnel with homes of record in Georgia, similar to the 1992 general election mailing, to include candidate questionnaires. The record shows that a list of military personnel was obtained from the Department of Defense and processed by John Grotta, a motivational letter and a candidate questionnaire were drafted and candidate questionnaires were sent to the campaigns of the two Georgia Senate candidates. However, ADF maintained in its interrogatory response that no mailing was actually sent due to time constraints. John Isaf testified that it was not sent because a significant portion of the NRSC funds was eaten up in radio ads.

<sup>41</sup> The written radio script produced by ADF has Captain McDaniel urging military members to vote in "Georgia's runoff election for U.S. Senate" A copy of an audiotape of the ad, however, leaves off the phrase "for U.S. Senate." John Isaf suggested in his deposition that this may have been either a mistake by the Captain or was done purposely to reduce the time of the ad.

An announcer told military listeners to contact their unit Voting Assistance Officer for a federal absentee ballot. The ad did not identify any specific candidates in the runoff election.

According to ADF's interrogatory responses, the video Public Service Announcement ADF produced and distributed to military bases and local commercial television stations was produced at the studios of the National Republican Congressional Committee ("NRCC") without charge. Mike McDaniel acknowledged in his deposition testimony that Curt Anderson helped arrange this in-kind use of NRCC's production facilities.<sup>42</sup> The video PSA was similar to the radio ad described above in encouraging military members to "please remember to request an absentee ballot and vote," without referencing any candidates.<sup>43</sup>

In addition to the radio ad and PSAs, the record reflects that Captain McDaniel also traveled to four Georgia military bases to encourage military participation in the runoff election. There, according to ADI's newsletter, he met with base Voting Assistance Officers and base newspaper editors and conducted several media interviews encouraging military personnel to vote.

The evidence described above, together with the timing, circumstances and pattern of the NRSC payment, establishes that the NRSC made its November 1992 non-federal payment to

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<sup>42</sup> Curt Anderson testified in the context of discussing the later Texas special election that "if we were trying to get something done cheaply" the NRSC would routinely talk to the NRCC since they had production facilities and "the lawyers" would determine whether any in-kind production needed to be reported. He testified that he did not recall arranging for ADF to use the NRCC facilities but stated that it was possible. Anderson at 268-270.

<sup>43</sup> An exact copy of the video PSA script for the Georgia runoff was not produced by ADF. Instead, as with the 1992 general election PSA, ADF produced a copy of a 1994 script that it says was representative of the Georgia runoff script except for the date of the election.



ADF with the knowledge that it would be used for voter turnout efforts aimed at a population the NRSC believed favored Republican candidates. To the extent that Curt Anderson arranged for free production of the ADF's video PSA, the NRSC may even have had direct knowledge of a specific GOTV activity, and the in-kind production services arranged would have added to the value of NRSC's non-federal payment. ADF's known GOTV activities in Georgia fit the definition of generic voter drives since they urged certain members of the general public to vote in a election that included a federal and state candidate, but did not reference specific candidates. Therefore, the cost of ADF's GOTV activities were allocable expenses and the NRSC should have paid for at least 65% of the cost using federal funds. No federal funds were used.

**b. November 1992 Payment to Coalitions for America**

The day after the NRSC made a second nonfederal payment to ADF, the NRSC made a second nonfederal payment to Coalitions for America. This payment, dated November 11, was for \$40,000 and, like the October 1992 CFA payment, was accompanied by a cover letter signed by Paul Curcio stating that the funds were for CFA's "Good Government Activities." Curcio also approved the issuance of the payment and Jeb Hensarling signed the check which was described in the accompanying check stub as a "transfer." Once again, immediately upon receiving the NRSC's payment, CFA made a contribution to the National Right to Work Committee on November 12, this time in the amount of \$35,000. 11/12/92 Coalitions for America Check No. 1455 to National Right to Work Committee (Doc. No. 450014).

The record shows that NRTWC began list production for the first of two separate mailings concerning the Georgia runoff Senate candidates just two days before the date of CFA's check. See e.g., NRTWC Purchase Order dated 11/10/92 (Doc. No. 451430). Both mailings, one dated November 16 and the other November 18, were sent to NRTWC supporters in

Georgia. As with the NRTWC's 1992 Wisconsin mailing discussed above, both runoff mailings identified the Republican and Democratic Senate candidates by name and referred to them in their role as candidates. The mailings portrayed the Democratic candidate, Wyche Fowler, as a friend of "Big Labor" and critically referenced Fowler's receipt of \$380,000 from "union-brass PACs," while portraying Republican Paul Coverdell as having a 100% commitment to "Right to Work."

More specifically, the November 16th mailing emphasized that "[o]ne vote in the Senate could determine the fate of the Right to Work," and noted that "[t]he crucial question is, where do Georgia's Senate candidates stand on Right to Work?" (emphasis in original).

11/16/92 "RTW Actiongram" (Doc. No. 450858-863 at 858). The communication then explained that while Fowler "refuses" to respond to the NRTWC's survey, his record clearly established his support for unions, in contrast to "Mr. Fowler's opponent," Republican candidate Coverdell, who "has leveled with you and vowed 100% commitment to protect your Right to Work." *Id.* (emphasis in original). *Id.* at 450858-859.

The November 18th mailing contained similar language. It expressed concern "about how Senator Wyche Fowler will vote on compulsory-unionism legislation if he is sent to Washington as your U.S. Senator" and critically referenced the Democratic candidate as "one of Big Labor's most reliable water carriers in the U.S. Senate." 11/18/92 "NRTWC Survey '92" (Doc. No. 450864-870 at 864)(emphasis in original). In contrast, the mailing noted that "Mr. Fowler's opponent, Paul Coverdell did respond to his survey 100% for Right to Work" (Emphasis in original). *Id.* at 450865. In a postscript, the letter urges recipients to contact Fowler, stating, "Now is the time, in the face of a tough U.S. Senate battle, when he is more likely to mend his Washington ways." *Id.*

Both November mailings also contained a survey of Right to Work issues that listed both of the Georgia runoff Senate candidates and reflected all positive responses from Coverdell and no responses from Fowler. See 11/16 and 11/18 mailings, supra. Both mailings also asked the recipient to call the Democratic candidate Wyche Fowler “and urge him to repudiate his support for forced unionism” and to call the Republican candidate Paul Coverdell who “is under intense pressure from union goons to renounce his Right to Work support” to “tell Mr. Coverdell not to back down” and that “the people of Georgia support his pledge.” (11/18 mailing at 450864-865 ) or to “phone your thanks and encouragement to Mr. Coverdell . . .” (11/16 mailing at 450858-859) (*emphasis in original*).

As in October 1992, CFA also co-sponsored another segment of the satellite television program “Family Forum Live” after receiving the NRSC’s 1992 November non-federal payment. Like the October segment of this program, the November 17 segment consisted mostly of discussions of legislative and national policy issues. However, the November show featured a discussion with NRLC official Darla St. Martin concerning the “Freedom of Choice Act Target List” in which she discussed the results of the 1992 election, noting that “our candidate George Bush lost.” In a viewer call-in segment near the end of the show, a caller asked about the Georgia runoff election. The show’s hosts remarked that “Coverdell is a good guy” and “Fowler is a bad guy.”

CFA’s President, Eric Licht, *remembered even less about the circumstances* surrounding the NRSC’s November payment than he did about the earlier October payment. He testified that he did not remember whether he talked to Curcio about the additional check, and he did not remember any discussions with Curcio or Anderson about possible contributions to the NRTWC or about the Georgia runoff election. Licht at 73-77, 122-123. When asked about

CFA's second contribution to the NRTWC, Licht testified "All I remember is sending them a check for \$35,000." Licht at 78. Licht testified that he may have told NRTWC he was going to send them a \$35,000 check, but stated there was no discussion of how the money was to be used, "[b]ecause as I said the organization uses the money as it wishes. I didn't tell them how to use the money." *Id.* Licht further testified he did not know how NRTWC used the funds and he did not recall any discussion with anyone at NRTWC about the Georgia runoff election. *Id.* at 79, 81.

Once again, the circumstantial evidence surrounding the NRSC's November payment to CFA strongly supports a conclusion that it, like the October CFA payment, was made for voter turnout. The NRSC made the payment, one of only three significant non-federal payments made in November to nonprofit groups, just before a special Senate election whose outcome was dependent on turnout of voters likely to support the Republican candidate. At the time of the payment, the NRSC had exhausted its contribution and coordinated expenditure limits that would have allowed it to use federal funds in direct support of Coverdell's election. Coinciding with the receipt of NRSC's payment, CFA made the second of two 1992 grants to National Right to Work Committee. Both 1992 grants to NRTWC, totaling \$60,000, were made after CFA received funds from the NRSC. Coinciding with the receipt of CFA's funds, NRTWC produced two mailings to Georgia supporters expressing concern about the Georgia Democratic Senate candidate's positions on right-to-work issues and portraying his Republican opponent in a more favorable light. The failure of Jeb Hensarling and Paul Curcio to recall the purpose of the November nonfederal payment to CFA which they either signed or approved, and CFA President Eric Licht's failure to shed light on how CFA became the beneficiary of two of the few 1992 payments NRSC made to nonprofits and why he chose to make contributions to NRTWC when

he did, do not detract from or contradict the conclusion to be drawn from the strong circumstantial evidence.

Had the NRSC directly financed the 1992 NRTWC Georgia runoff mailings, it would have had to use at least 65% in federal funds to do so. Instead, no federal funds were used.

**c. November 1992 Payment to National Right to Life Committee**

Approximately a week after the NRSC gave non-federal funds to ADF and CFA, it disbursed another \$45,000 in non-federal funds to the NRLC on November 17, 1992. This payment was made just a week before the Georgia runoff and was described as a "transfer" on the accompanying check stub. As described below, the circumstances surrounding the payment and the use of the funds indicate that the NRSC made it to finance voter turnout activities intended to influence the election of Republican candidates in the Georgia runoff, including U.S. Senate candidate Paul Coverdell.

NRLC Executive Director David O'Steen testified that sometime prior to the receipt of the November contribution, he received a phone call from the NRSC notifying him that they would be making a contribution to the NRLC. O'Steen at 67. When asked whether the NRSC stated any purpose for the contribution, O'Steen testified, after consultation with counsel, that he did not recall. However, O'Steen went on to testify that he recalled in the phone call "a question or some discussion of whether or not we ever made contributions or would make contributions to the Christian Coalition." O'Steen further testified that he responded to the question, but could

not specifically recall what his response was, who the caller was, or whether the caller expressed a desire that NRLC make a contribution to Christian Coalition.<sup>44</sup> O'Steen at 65-72.

Carol Long corroborated O'Steen's testimony about the substance conveyed in the NRSC phone call. In her deposition, she testified that O'Steen told her that the NRLC would be getting the November check from the NRSC and that "we were also asked to make a contribution to the Christian Coalition." Long at 75.

O'Steen further testified that after the NRSC's phone call, he had a phone conversation with Ralph Reed, the Executive Director of the Christian Coalition ("CC"). According to O'Steen, Reed suggested that the NRLC make a contribution to the CC's Georgia state affiliate, the Georgia Christian Coalition, and he and Reed discussed contributions to both organizations. O'Steen could not recall if he and Reed discussed the Georgia runoff election or the fact that the NRSC was making a contribution to the NRLC. O'Steen at 95-98. The NRLC subsequently mailed checks in the amounts of \$10,000 and \$15,000 to the Georgia Christian Coalition and to the Christian Coalition, respectively, on December 1, 1992. See December 1, 1992 letters from O'Steen to Ralph Reed and Pat Gartland (Doc. Nos. 200155 and 200156).

O'Steen testified that he was generally aware of CC's activities in 1992, but stated that he could not recall whether or not he knew that CC intended to distribute voter guides in the Georgia Senate runoff. O'Steen 76-78. Indeed, CC and its Georgia affiliate were active in the November 24, 1992 Georgia runoff, and their intention to distribute 1 million voter guides for the Georgia runoff was reported in the media prior to the election. See Mark Sherman, *Mixing*

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<sup>44</sup> The former 1992 NRSC employees deposed in this matter either denied speaking with O'Steen about a possible contribution to the Christian Coalition or testified that they did not recall doing so. Jeb Hensarling testified that he did not remember speaking with O'Steen.

*Religion, Politics Coverdell Looks to Fundamentalists, Fowler to Blacks*, Atlanta Journal and Constitution, November 12, 1992, at A1. See also, David Rogers, *Political Eyes, Funds Turn South to Bloody Duel of Fowler, Rival in Georgia Runoff for Senate*, The Wall Street Journal, November 20, 1992 at A16. Moreover, David Carney, who was working on the Coverdell campaign in Georgia for the RNC, testified that he was aware that the Christian Coalition did a scorecard for the runoff in the last week of the election. When asked how he became aware of this activity, he replied, "Because it was a pretty big thing. I think it was a big thing in the newspaper. And they were out organizing." He also testified that CC had sent a questionnaire to Coverdell's campaign manager. Carney at 237-238. Carney said Curcio was also in Georgia working on the campaign and he spoke to him everyday. Id.

The Christian Coalition's Georgia runoff voter guide clearly identified the Republican and Democratic candidates running for the U. S. Senate and for the state Public Service Commission seat, and contained the date of the runoff election. See "Christian Coalition Voter Guide '92: Georgia Runoff Election." The guide provided a contrasting list of the two Senate candidates' positions on a number of issues, with Coverdell noted as opposing "Abortion on Demand (Freedom of Choice Act)," "Homosexual Rights" and "Tax-Funding of Abortion," and Fowler listed as supporting these issues. Id. According to information received by the Commission, these voter guides were distributed by the Georgia Christian Coalition to persons or churches which had ordered them from the National Christian Coalition, to known Christian leaders, and to pro-family activists.

O'Steen specifically admitted that the Christian Coalition contributions were made with the non-federal funds received from the NRSC on November 17.<sup>45</sup> According to information received by the Commission, coinciding with the receipt of NRLC's December check, the Christian Coalition made at least one \$1,000 payment to the Georgia CC for consulting services relating to voter guide distribution on December 2 and the Georgia Christian Coalition made at least one \$4,000 payment for the printing of the voter guides on December 8.

In addition to the contributions to the Christian Coalition made at the request of the NRSC, David O'Steen also testified that the NRLC used a portion of the NRSC funds received on November 17 to make "non-partisan" GOTV phone calls in the U.S. Senate runoff. O'Steen at 89-90. According to an affidavit filed in this matter, O'Steen averred that he, and possibly Carol Long and Darla St. Martin, was involved in deciding how to use the November payment from the NRSC. An invoice for the phone calls shows that they began on November 18 and continued through the day of the election. These phone calls, made through a vendor to 34,282 identified pro-life supporters using lists owned by NRLC and the Georgia Right to Life Committee, cost \$17,372.75. The phone script opened with a statement that "your vote in [tomorrow's] Senate runoff election is crucial."<sup>46</sup> See 11/23/92 Infocision script, "National Right to Life, Get Out to Vote - Georgia General Election Runoff" (Doc. No. 200409). The script then

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<sup>45</sup> The NRSC's request that the NRLC make a contribution to the Christian Coalition rather than the NRSC making a direct contribution to the Christian Coalition may be explained by the fact that, according to information obtained by this Office, the Christian Coalition Board of Directors had adopted a policy in November 1991 not to solicit or accept contributions from political parties.

<sup>46</sup> The invoice produced shows that the GOTV calls were made between November 18-24, 1992, but the only script produced was one for calls to be made the day before the election.



stated that Wyche Fowler supports an "abortion on demand bill, which allows abortion for any reason, even on teenage girls without their parents' knowledge" and that Fowler had voted to allow tax-funded abortion. Next, the script stated that Coverdell supports "Georgia's parental notice law and opposes the abortion on-demand bill" and is "against using tax dollars for abortions." The script ends by urging supporters to "please vote [tomorrow]." Such calls, made to identified pro-life supporters, were intended to increase turnout for the Republican U.S. Senate candidate.

Just as the NRLC undertook its "non-partisan" GOTV activity in the Georgia runoff, its separate segregated fund, *NRL PAC*, began running radio ads expressly advocating Coverdell's election. According to *NRL PAC*'s disclosure reports, these ads ran on 32 Georgia radio stations. The cost of more than half of the ads were shared with NRLC's Minnesota state affiliate, Minnesota Citizens Concerned for Life Committee for a Pro-Life Congress ("MCCL PAC"). *NRL PAC* disclosure reports reflect expenditures for the ads beginning on November 17, the date that NRLC received NRSC's non-federal check. In addition, *NRL PAC* and MCCL PAC both made \$2,500 contributions to Coverdell's campaign on November 18 and November 17, respectively.

The record reflects that neither the NRLC nor its separate segregated fund, *NRL PAC*, had undertaken any activity supporting Paul Coverdell until the NRSC made its non-federal payment. In fact, *NRL PAC*, operated by the same key NRLC officials who decided to conduct the "non-partisan" GOTV calls for the Georgia runoff, supported a Coverdell opponent in the Republican primary and had supported neither Coverdell nor Wyche Fowler in the general election held only three weeks before the runoff. Also, according to news reports, the Georgia Right to Life PAC, the separate segregated fund of NRLC's Georgia affiliate, had declined to

endorse anyone in the Republican primary runoff in August 1992, although it had issued a press release that recognized Bob Barr, one of Coverdell's primary opponents, as "significantly more favorable to the pro-life cause than Paul Coverdell." *Senate Watch - Georgia: Candidate's "Trade Barbs" on Local Radio Show*, The Hotline, August 6, 1992.

David O'Steen explained NRLC's sudden involvement in the Georgia runoff by stating that the NRLC had learned more about Coverdell's positions on abortion. O'Steen at 168-170. NRLC PAC Director Carol Long specifically cited to the election of Bill Clinton and Coverdell's position against the Freedom of Choice Act as the reason the NRLC got involved in the Senate runoff. Long at 94-95. According to news reports, though, Coverdell's position on the issues discussed in the NRLC's GOTV phone calls -- the Freedom of Choice Act, taxpayer funding of abortion, and parental notification -- were unchanged since the Republican primary. See Mark Sherman, *Election '92: Keeping You Up to Date: Can Abortion Issue Trip Balance at Polls*, Atlanta Journal and Constitution, June 6, 1992 at B4 and Mark Sherman, *Coverdell Leading GOP Senate Race: Barr, Knox Vie for Runoff Spot*, Atlanta Journal & Constitution, July 22, 1992 at C1). The NRLC officials deposed testified that they could not recall or did not know whether the NRSC asked the NRLC to get involved in the Georgia runoff election or conduct activity in connection with the election. See O'Steen at 172, Long at 77, St. Martin at 101.

The deposition testimony of NRSC's then Political Director, Paul Curcio, supports the conclusion that the NRSC's November 17 payment to the NRLC was for voter turnout aimed at the Georgia runoff. When asked if he was involved in the NRSC's contributions to the NRLC in 1992, Curcio confirmed that he was. When asked to explain his involvement in those contributions, Curcio testified as follows:

A. It was minimal in terms of I signed off on the forms and I was aware

of what the overall objective was.

Q. And what was your understanding of the overall objective

A. Turnout, voter turnout.

Curcio at 73. Curcio went on to explain, however, that there had been no internal NRSC discussion of the states in which the GOTV activity would be focused. Curcio at 74 and 310.<sup>47</sup> However, at the time of the NRSC's November 17 non-federal payment, the U.S. Senate election runoff was the only imminent federal election scheduled.<sup>48</sup>

The circumstances described above strongly support the conclusion that the NRSC's November 1992 non-federal payment, like the October 1992 payments, was to enhance the voter turnout needed to ensure the success of the Republican candidate in the only federal race occurring at the time of the payment, namely the Georgia Senate runoff. The outcome of this race was critically dependent on voter turnout. The NRLC's admitted use, at the NRSC's request, of a portion of the funds for contributions to a group known to be actively involved in the Georgia runoff, and its financing of its own "nonpartisan" GOTV calls in a race which it and its state affiliate had ignored three weeks earlier, further support the conclusion that the NRSC payment was intended and used for GOTV. Once again, the testimony of former NRSC employees who approved the checks and of top NRLC officials, consisting largely of assertions of failed recollection, does not detract from or contradict the strong circumstantial evidence.

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<sup>47</sup> While there appears to be some confusion regarding the extent of Mr. Curcio's specific recall of the purpose of November 1992 contribution, see Curcio at 306, 308, he subsequently reaffirmed that he generally knew that all of the 1992 contributions to the NRLC were for voter turnout. See Curcio at 309-310.

<sup>48</sup> A special election for the North Dakota U.S. Senate seat vacated by the death of Quentin Burdick did not take place until December 4, 1992.

Had the NRSC directly financed GOTV activities such as those conducted by the NRLC and CC in the Georgia runoff election, it would have had to use at least 65% in federal funds to do so. No federal funds were used.

**d. Summary of Georgia Runoff Evidence**

These NRSC nonfederal payments to nonprofits during the runoff election period are consistent with the NRSC's repeated pattern of making payments during critical periods in close elections to groups known to engage in electoral activity historically benefiting Republican candidates. The timing of NRSC's non-federal payments; the exhaustion of the NRSC's coordinated expenditure limit for the runoff; the importance of Republican turnout for the runoff; and the fact that the payments were made to three groups who used those funds for communications aimed at turning out voters likely to support Coverdell or passed them on to other groups who did, support a conclusion that the NRSC made the non-federal payments to influence the election of Paul Coverdell in the Georgia Senate runoff. Given the fact that there was also a non-federal race on the ballot for the Georgia runoff, the NRSC payments to the NRLC should have been made with at least 65% federal funds. No federal funds were used.

**3. 1993 Texas Special Election & Special Election Runoff Activity**

The NRSC underwent some changes in key personnel at the end of the 1992 election cycle. Executive Director Jeb Hensarling returned to Texas, while Curt Anderson left the NRSC and began his own consulting business. However, two key NRSC officials remained at the NRSC for the 1993-94 election cycle: NRSC Chairman Senator Phil Gramm and Political Director Paul Curcio. William "Bill" Harris and David Carney assumed the positions of NRSC Executive Director and Deputy Executive Director, respectively.

At the time William Harris and David Carney assumed their respective positions, the NRSC's debt was a significant concern. Carney at 40 and Deposition of William Harris at 29-30 (hereinafter "Harris at \_\_\_\_"). At the end of January 1993, NRSC reported a federal account debt of \$5.8 million dollars and approximately \$340,000 cash-on-hand. According to Harris, the status of debt repayment was a topic of discussion during his frequent meetings with Senator Gramm. Harris at 38-39. According to David Carney, the new NRSC management put into place a stringent cash management system and both Carney and Harris made an effort to sign off on all non-payroll expenditures over a certain amount. Carney at 43-44.

Around the same time the NRSC management was dealing with a serious debt, another unscheduled U.S. Senate election loomed on the horizon when Senator Lloyd Bentsen was nominated to be Secretary of the Treasury and vacated his newly-won Senate seat in Texas. Although Texas Governor Ann Richards appointed Robert Krueger to temporarily replace Bentsen, a special election to fill the seat permanently was scheduled for May 1, 1993. Under Texas law, special elections operate as an open primary in that candidates from all parties, including multiple candidates affiliated with a particular party, may compete in the election. In the event that no candidate receives a majority vote, a runoff election is scheduled. The May 1993 special U.S. Senate election involved three major Republican candidates, including then Texas state treasurer Kay Bailey Hutchison, and two major Democratic candidates.

The NRSC's debt raised concerns about its ability to participate in the Texas race. Carney at 63, Harris at 61-62. The NRSC's participation, through the making of coordinated expenditures, would require a large, unanticipated expenditure a year before the organization normally would have to make such election-related expenditures, and this event had not been anticipated in the budget. *Id.* at 63. Even so, Carney testified that the NRSC decided to spend up

to the full coordinated limit "even if we had to borrow the money," because of the importance of the race. According to Carney, this importance was based on the facts that Texas is a big state, the U.S. Senate seat was considered an open seat, and President Clinton was polling poorly in Texas, garnering only a 23% approval rating. Texas was also the home state of then NRSC Chairman Gramm. Id. at 78-80.

**a. March 1993 Payment to ADF**

Against this backdrop, NRSC made another significant payment to ADF on March 2, 1993 in the amount of \$170,000. The payment was described as "party building" on the accompanying check stub. Paul Curcio signed the request form approving the issuance of the check and, once again, was the signatory on the cover letter sending the check to ADF. Though Curcio acknowledged his signature on the check request form and cover letter in his deposition, he testified that *did not* recall the March 3 payment or any 1993 meetings with ADF. Curcio at 263-264. NRSC \$170,000 payment together with its \$40,000 May payment discussed in the next section comprised 99% of ADF's 1993 income.

David Carney and Mike McDaniel acknowledged during their depositions that the \$170,000 NRSC payment was to *finance another ADF military voter program* for a special U.S. Senate election, this time aimed at military personnel with homes of record in Texas. McDaniel at 230-231, Carney at 123-124. Curt Anderson, who was now a private consultant working for ADF, also acknowledged being part of a solicitation of the NRSC for funding for a voter turnout program for the Texas special election. However, he again testified that he could not remember the specifics of any meetings. Anderson at 242-244.

According to David Carney, he met with ADF President "Red" McDaniel at the NRSC prior to the Texas special election. During the meeting, Carney and McDaniel discussed ADF's

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military voter program and McDaniel asked for a contribution. Red McDaniel explained to Carney how ADF worked with the Pentagon to get lists of military members, how ADF could do so for Texas and showed him samples of previous ADF mailings which included Senate-related candidate questionnaires and absentee ballot materials. McDaniel then discussed how the candidate questionnaire could be "updated for the '90s" to include questions about gays in the military, military downsizing and "Clinton." Carney at 108-118. Carney testified that he may have passed ADF's contribution request on to Curcio and he was "pretty sure" that Red McDaniel also sent in a written proposal. *Id.* at 118-122. Carney also testified specifically that he understood that the \$170,000 NRSC payment to ADF was for a military voter turnout program which would include a mailing to military personnel containing what he termed an absentee ballot and a candidate questionnaire. *Id.* at 123-124.

ADF's former Executive Director Mike McDaniel and former Program Director John Isaf corroborated the fact that ADF prepared a written proposal for funding an MVP program for the special election. According to Mike McDaniel, the proposal was prepared especially for the NRSC, and a copy was given to them. McDaniel at 225-226. See also Isaf at 174-175; 243-244. A copy of the Texas proposal produced by ADF stated that ADF intended to implement "an aggressive vote delivery system for the May 1 special U.S. Senate election in Texas." The proposal also described the contents of a mailing to military personnel with homes of record in Texas. The proposed mailing was to include a Federal Postcard Registration and absentee ballot request form and a comparison of Senate candidates' responses to an ADF national defense issues questionnaire. See "Defend America: Vote, The Military Voter Program of The American Defense Foundation, A Proposal for the Texas Special Election, 2/22/93" (Doc. No. 500783-792). When shown a copy of the proposal, Carney did not recognize it. He opined, however,

that Red McDaniel may well have given the proposal to the NRSC, but he did not specifically recall it. Carney at 132.<sup>49</sup>

As with the 1992 general election, ADF faxed a cover letter requesting responses to its candidate questionnaire to Democratic and Republican candidates running in the Texas special election. Once again, only the Republican Senate candidates submitted completed questionnaires.<sup>50</sup> Approximately 190,000 copies of a compilation of the responses to the candidate questionnaire were mailed to Texas reserve officers and military personnel with homes of record in Texas, together with a motivational letter from Red McDaniel and a federal military voter registration and absentee ballot request form. The back of the candidate questionnaire contained information about completing the federal military voter form and relevant deadlines.

As with ADF's 1992 general election mailing, its 1993 Texas special election mailing was sent to military personnel whose names were included on a list of military personnel obtained from the Department of Defense. McDaniel at 235-236. And, like the 1992 mailing, the 1993 Texas mailing clearly identified the four Republican and Democratic candidates by name. See 1993 ADF "Defend America: Vote" Texas Special Election Mailing (Doc No. 500557-566). The candidate questionnaire showed generally favorable responses from the Republican candidates on issues of concern to military voters and the notation "DID NOT RESPOND" with regard to the Democratic candidates. Id. at 500558B-558C. The motivational letter from Red McDaniel urged the recipient to "vote in the Texas special election for U.S.

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<sup>49</sup> When shown a copy of the special election proposal, Paul Curcio testified that he did not recognize it and William Harris testified that he had never seen it. Curcio at 280, Harris at 106-107.

<sup>50</sup> In his deposition, David Carney testified that he did not think anyone at the NRSC advised the Republican Senate candidates that NRSC had provided funds to ADF to do a mailing with a candidate questionnaire or that anyone had suggested that the candidates complete ADF's questionnaire. Carney at 135.



Senate May 1, 1993." Id. at 500560. Printed on the back of the candidate questionnaire were instructions to "TAKE THESE 4 EASY STEPS TODAY TO ENSURE YOUR VOTE COUNTS ON MAY 1, 1993." (Emphases in original). The first three steps were instructions on filling on the federal military voter form; the fourth stated, "Hold onto this questionnaire so you can an informed decision on election day." Id. at 500559.

Three of the issues mentioned by Red McDaniel at his meeting with Carney -- gays in the military, downsizing and "Clinton" -- appeared on the candidate questionnaire. Perhaps even more significant, in view of Carney's testimony about Clinton's poor Texas polling numbers, is the fact that the 1993 questionnaire attempted to capitalize on Clinton's unpopularity in Texas by linking highly visible Clinton Administration/Democratic initiatives with positions likely to be viewed as unfavorable by military personnel, not unlike a push poll. For example, one question specifically associated a Clinton budget proposal with downsizing and salary cuts and freezes: "President Clinton has proposed a total of \$124 billion in defense cuts . . . Among the cuts will be a reduction in base force. . . a salary freeze and decreases in COLA for all military personnel." Id. A second question asked whether the candidate supported lifting the ban on homosexuals serving in the military, one of the Clinton administration's first policy initiatives that met with controversy. And, a third question suggested that national health care, a highly visible Clinton Administration policy, would result in discontinuation of veterans' benefits. Id. at 500558B.

When shown a copy of the candidate questionnaire included in ADF's mailing, David Carney acknowledged that it contained the kinds of questions he and Red McDaniel had discussed, although he stated that he had never seen the actual mailing. Carney at 134. On the

other hand, when shown a copy of ADF's mailing, William Harris testified that he remembered seeing the ADF questionnaire but he could not recall where. Harris at 111-112, 116.

In addition to the direct mailing, the record shows that ADF also sent print and video Public Service Announcement to military bases in Texas for publication in base newspapers and broadcast on closed circuit television and additional videotape PSAs to about 27 commercial television stations surrounding the bases. See e.g., ADI News, Spring 1993, "Texas Military Members Urged to . . . Defend America: VOTE!" (Doc. No. 500059). A copy of the videotape PSA produced to the Commission featured Captain McDaniel introducing himself, mentioning his experience as a P.O.W. and encouraging military members to vote in the Texas special election. See script entitled "Military Vote - Public Service Announcement, Texas Special TV" (Doc. No. 500431). Additionally, as with the Georgia runoff election, Captain McDaniel traveled to eight Texas military bases to meet with base officials, military personnel and local media outlets to urge military members to vote in the special election.

In addition to being advised of ADF's planned MVP efforts through a meeting and a proposal, the record shows that NRSC was informed of specific ongoing MVP activities. Three documents evidence the NRSC's *direct involvement and/or knowledge of specific Texas MVP activities*: a fax log produced by ADF showing transmissions to an NRSC fax number hours before ADF began faxing the candidate questionnaire to Texas candidates, and two ADF fax transmittal forms to Curcio asking for his comments on a draft and a *revision of the scripts* for video Public Service Announcements aimed at both the Texas special and runoff elections.

With respect to the fax log showing two fax transmissions to the NRSC hours before ADF's transmission of its questionnaire to the Senate candidates, John Isaf testified that he did not "specifically" recall what ADF may have faxed the NRSC on that day or whether ADF had

sent a copy of the questionnaire to the NRSC. Isaf at 187 and May 4, 1993 Memo from Wes Anderson to Isaf re: Military Voter Registration/Candidate Questionnaire and attached fax log (Doc. No. 500734-738). However, David Carney testified that he believed he saw the ADF candidate questionnaire sent to the candidates when he was in Texas, although he did not remember seeing the finished mailing containing the questionnaire. Carney at 113 and 133-135.

With respect to the ADF fax transmittal forms forwarding PSA video scripts and asking for comments, Paul Curcio emphatically denied having seen the fax or the scripts, pointing out that the phone number (not the fax number) on the fax cover sheet was not his direct phone line. Curcio at 291-292. See 4/13/93 "Facsimile Cover Sheet" to Paul Curcio from John Isaf (2) and PSA scripts (Doc Nos. 500430-431, 433-434). However, Mike McDaniel, while not fully certain why the scripts were provided to the NRSC, suggested that ADF had to "go through somebody to be able to get it [videotaping] done. So he's [Curcio] probably the guy." McDaniel further opined that "maybe" Curcio was the decisionmaker on "getting it filmed and making the decision on whether or not they would film it." McDaniel at 247-250. John Isaf supported McDaniel's explanation. When asked how he happened to send the PSA scripts to Curcio, Isaf replied, "Well, probably just to let them know what we were doing." Isaf at 202. He also noted that ADF used the NRCC studios to produce the video. When asked why he requested Curcio to call him with comments, Isaf testified that he presumes he was asking for technical advice, *i.e.*, whether the script was too short or long and whether the *production capabilities* existed to film it as scripted. Isaf at 202-205. Although Isaf could not recall whether Curcio commented on the scripts, the record indicates that ADF did receive use of the NRCC's studios to tape the video PSAs and was charged only about half the normal production cost. See NRCC Statement of Services (Doc. No. 500318).

**b. May 1993 Payment to ADF**

Since none of the candidates in the Texas special election won a majority of the vote, a June 5, 1993 runoff was scheduled between the two top vote-getters, Republican Kay Bailey Hutchison and Democrat Bob Krueger. Because this was the only election during this period, and because of the importance of the election to the Republican party, the NRSC was heavily involved in the Hutchison campaign. Carney testified that during the runoff he was in Texas almost full time, serving as the "man on the ground" and reporting back to the NRSC on a daily basis. Carney at 80. Carney worked primarily out of the Texas state party's offices and with the state party in assisting the Hutchison campaign effort. Carney also visited Hutchison's campaign offices and testified that he had multiple daily contact with Karl Rove, Hutchison's general consultant and David Beckwith the campaign's chief spokesman. He also spoke with the candidate from time to time when she was not on the road. *Id.* at 100-103. William Harris was similarly involved in the special runoff election, interacting with various Hutchison campaign staffers, including Rove and Jim Francis, the campaign manager, as well as with Hutchison. Harris testified that he discussed with Francis what had to be done after the special election and acknowledged that the discussions "very well could have" involved get-out-the-vote strategy. Harris at 128-132.

Both Harris and Carney acknowledged the significance of voter turnout in special and runoff elections and the NRSC's awareness of GOTV plans for the election. According to Harris' deposition testimony, his involvement in the Texas runoff election included ensuring that discussions were ongoing between Curcio and Carney about get-out-the-vote plans. Harris at 125-126. In his deposition, Carney explained that voter turnout programs in Texas are expensive because the state has no party registration. Carney further testified that the state party probably

had a GOTV plan for the runoff election aimed at turning out Republican primary voters, but he did not "specifically" remember discussing GOTV with anyone there, even though he worked mostly out of the state party's offices during that time and worked with the state party "very closely." Carney at 82-84, 142. Indeed, when shown a copy of monthly calendars produced by William Harris, described more fully below, Carney identified the calendars as a GOTV plan for Texas which he would have had a role in formulating and acknowledged that he and the state party probably discussed such a plan "a million times." The calendars, however, did not refresh his recollection about any specific discussions about GOTV. Carney at 86-94. Carney also acknowledged that he probably spoke with Karl Rove, about what the state and national parties were doing for GOTV, but could not recall any specific conversations. Carney at 103.

For his part, Political Director Paul Curcio testified that he was aware of a Texas Republican state party GOTV effort for the runoff but said he was not in contact with the state party during that time. Curcio at 285-286. When shown the calendars that Carney had identified as the Texas GOTV plan, Curcio testified that he had never seen them before. Curcio at 277.

Just prior to the June 1 special election runoff, the NRSC made a second nonfederal payment to ADF of \$40,000 on May 26, 1993. NRSC internal documents show that both Paul Curcio and William Harris authorized the payment, that Harris co-signed the check and that Paul Curcio signed the cover letter transmitting it to ADF.

When asked how the May 26 payment came about, Mike McDaniel testified it was "[f]or the runoff election to encourage military members to vote." McDaniel at 258. Calendars reflect two meetings with NRSC representatives prior to ADF's receipt of the \$40,000: one on April 26 with Paul Curcio and one on May 14 with Curcio, Harris and Anderson at the NRSC. See April and May 1993 McDaniel calendars (unstamped). Although Anderson and Curcio both testified

that they did not recall any meetings between NRSC and ADF prior to the runoff, William Harris confirmed that he met with Mike McDaniel at the NRSC during his tenure as Executive Director, although he could not recall when. Harris at 84-86. Internal ADF documents confirm that Mike McDaniel sought a reimbursement for travel expenses to the NRSC for MVP meetings on the dates reflected in his calendar. See 1/93-5/93 ADI reimbursement form (Doc. No. 500858).

It appears that ADF presented another MVP funding proposal to the NRSC for the runoff at one of these meetings. ADF Program Director John Isaf testified that he prepared a written proposal seeking funding for ADF's MVP activities aimed at the runoff and that ADF presented a proposal to the NRSC. Isaf at 231, 243. Four days after the May 14 meeting date, Isaf faxed materials to the Texas vendor that prepared ADF's runoff mailing, stating "I can't believe we got the go ahead." When asked the meaning of the sentence Isaf testified, "Probably got the funding to do the program." Isaf at 235.

The runoff proposal prepared by Isaf detailed the MVP activities ADF had conducted for the Texas special election and proposed undertaking runoff activities that would largely build on what had already been done for the special election. See "ADF Military Voter Program, Texas Runoff Election" (Doc. No. 500392-394). Specifically, the proposal stated that ADF would send a second mailing containing a comparison of the two runoff candidates' responses to ADF's original questionnaire on defense issues (only one of whom, Hutchison, had responded to the original questionnaire) and that it would distribute a video PSA for the runoff that had already been produced. Id. at 500392-393. The proposal also noted that a Texas vendor would be used

for the mailing to ensure quick delivery.<sup>51</sup> *Id.* Isaf testified that he presumed that this written proposal was presented to the NRSC. Isaf at 244.

David Carney testified that he recalled discussions at the NRSC, probably with Curcio or Harris, about ADF doing a second mailing for the special election runoff but he did not specifically recall a second contribution. Carney at 136-137. However, it appears that Carney was aware of ADF's runoff questionnaire since he testified that he believed that Republican Senate candidate Kay Bailey Hutchison asked him about the ADF candidate questionnaire though he did not recall a specific discussion about it. *Id.* at 139-140.

As the record shows, the NRSC indeed made a second non-federal payment to ADF of \$40,000 which Mike McDaniel specifically acknowledged was for get-out-the vote activities aimed at the runoff election. Indeed, with these funds, ADF in fact sent a second mailing to approximately 80,000 military personnel with homes of record in Texas, half the number of mailings ADF sent out for the special election.

As noted in ADF's written runoff proposal, the runoff mailing contained a cover letter from Red McDaniel urging the recipient to "vote in the Texas runoff election for the U.S. Senate on Saturday, June 5, 1993," accompanied by a compilation of the candidate questionnaire results listing the two remaining candidates -- Hutchison and Kreuger -- and their original "responses" to ADF's questionnaire: See 1993 draft of ADF Texas Runoff Mailing (Doc. No. 500340, 385-387). The compilation again expressly identified the two candidates by name, listed the

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<sup>51</sup> ADF used Campaign Services Group ("CSG"), a Texas vendor, to do the runoff mailing. The use of CSG suggests some involvement by Anderson in the runoff mailing. Both McDaniel and Isaf testified that they did not know how the vendor was chosen, but each stated that they probably used a Texas vendor so the mail would reach recipients faster. CSG was one of the primary direct mail fundraising vendors used by the Hartnett campaign in 1992 in South Carolina. Anderson acknowledged that he had interviewed vendors for the Hartnett campaign, chose CSG, and had had contact with a CSG principal.

Republican candidate's responses and contained the notation "Did not Respond" as to the Democratic candidate. *Id.* at 500386. Also, as indicated in the runoff proposal, the runoff mailing, unlike the special election mailing, was coordinated by a Texas vendor.

Mike McDaniel's explanation for the smaller runoff mailing was that it was budget-driven, but he could not remember how ADF selected the 80,000 names from the apparently larger list ADF had used for the first mailing. McDaniel at 262-263. One explanation for the smaller mailing may be that ADF narrowed its list to target military voters who had voted in the special election. Indeed, a computerized May 1993 calendar produced by Harris reflects a state Republican party plan to collect the names of special election voters and to target them as well as other segments of voters through GOTV mail and phone banks. *See* May 1993 Monthly Planner (Doc. No. 100102). Carney identified the May 1993 calendar as a GOTV plan for Texas that was very typical of a state party plan and acknowledged that he would have been involved in drafting such a plan. Carney at 86-90.

In addition to the runoff mailing, ADF again sent out copies of video PSAs featuring Red McDaniel to commercial television stations. As noted above, the script for the runoff video PSA had been sent to Paul Curcio for his review in mid-April along with a script for the special election.<sup>52</sup> And, as noted above, both the special election and special election runoff video PSAs were prepared at the NRCC studio and NRCC treated a portion of the production as an in-kind donation.

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<sup>52</sup> John Isaf explained that ADF planned for both a special election and a special election runoff when preparing the PSA scripts.



**c. Summary of Texas Special Election & Runoff Evidence**

The evidence shows that the NRSC made two non-federal payments to ADF in 1993 totaling \$210,000 specifically so that organization could conduct voter turnout aimed at military personnel with homes of record in Texas for two special federal elections: the May 1, 1993 special U.S. Senate election and the June 5, 1993 special election Senate runoff. As with the 1992 Georgia runoff, the NRSC had a strong incentive to use all non-federal funds for GOTV because in the Texas case, as of the end of January 1993, the NRSC's federal account was reporting a \$5.8 million dollar debt and approximately \$340,000 cash on hand. The federal account debt was a serious concern to NRSC officials and voter turnout in Texas was particularly expensive.

NRSC and/or ADF staff specifically acknowledged during their depositions that the NRSC's non-federal payments were for voter turnout for those races. Moreover, the payments followed meetings between NRSC and ADF at which ADF presented proposals detailing the GOTV activities it planned to undertake in the Texas elections. With respect to the March 1993 payment of \$170,000, NRSC Deputy Executive Director David Carney testified that at a meeting with ADF President Red McDaniel at which McDaniel requested a contribution for ADF to conduct a military voter program in Texas, McDaniel showed him Senate candidate questionnaires that ADF had mailed in the past and talked about how the issues contained in the questionnaire could be updated. Carney further testified that he understood that ADF would use the NRSC funds to send a mailing to military members that included what he termed an absentee ballot enabling military members to vote in the special election and a candidate questionnaire. The record also shows that the NRSC was informed of ADF's ongoing GOTV activities through the sharing of a script for a PSA video urging military members to vote in the special election

and assistance in arranging its production. NRSC Executive Director William Harris also acknowledged in his deposition that he remembered seeing ADF's candidate questionnaire featuring the candidates for the Texas special election.

With respect to the May 26 nonfederal payment of \$40,000, former ADF employee John Isaf acknowledged that ADF presented to NRSC a funding proposal for additional GOTV activities ADF proposed to undertake for the runoff, including a second mailing to military personnel with a candidate questionnaire containing responses of only the runoff candidates to ADF's original questionnaire and distribution of a PSA already produced for the runoff. David Carney confirmed that NRSC discussed a second ADF mailing for the special election runoff and, indeed, Mike McDaniel acknowledged that NRSC's May 1993 payment was for military voter turnout for the runoff. The NRSC's knowledge of ADF's runoff activities is further evidenced by ADF fax transmittal of the PSA script for the runoff election to the NRSC and Carney's testimony that Republican Senate candidate Kay Bailey Hutchison asked him about the ADF candidate questionnaire.

The above evidence establishes that the NRSC gave ADF non-federal funds in 1993 specifically to turn out military voters for two special election for U.S. Senate in Texas. The record shows that there were no other statewide partisan elections in Texas in May and June 1993. Consequently, the NRSC should have used 100% federal funds for these GOTV activities rather than 100% non-federal funds.

#### **4. 1994 General Election Activity**

##### **a. Payments to the National Right to Life Committee**

The NRSC continued its pattern of making non-federal payments to non-profit groups to support its Senate candidates into the 1994 election cycle. This time, however,

the NRSC made payments to only one group, the NRLC, all in the week before the general election. Between October 31 and November 4, 1994, the NRSC made the following four non-federal payments to the NRLC, totaling \$175,000: \$50,000 on October 31, \$50,000 on November 1, \$60,000 on November 3 and \$15,000 on November 4, 1994. NRSC records show that NRSC Executive Director William Harris authorized each payment and signed the check. NRSC's general counsel signed the cover letter forwarding each check.

Key NRSC staff remained the same for the 1994 Senate elections as for the 1993 Texas special election except that the NRSC expanded its field staff in anticipation of the 1994 elections. Also, by 1994 Curt Anderson had left his full-time private consulting business and was working as the Midwest Field Director at the RNC. Even as he served as an RNC staffer, however, Anderson continued to serve as a consultant to the NRLC, receiving a monthly retainer to provide them with fundraising and "strategic" advice. See Anderson at 215 and 225.

As was the case with the NRSC's non-federal payments to the NRLC and ADF in 1992 and 1993, the NRSC's 1994 payments to NRLC were preceded by meetings and phone calls between the organizations. In an early 1994 meeting, the NRSC gained information about the NRLC's general operations and about the 1994 Senate candidates in which the NRLC was interested.

Both Paul Curcio, NRSC's then-Political Director, and Carol Long, NRLC's PAC Director, testified that the organizations met at the NRSC's offices in early 1994,

probably before June, and discussed Senate races and the NRLC's operations, generally.<sup>53</sup> Paul Curcio described this 1994 meeting as wide-ranging. According to Curcio, the organizations discussed how each group saw some of the 1994 Senate races shaping up, the candidates that the NRLC was interested in, legislation pending before Congress, and how the NRLC saw issues developing nationally. According to Curcio, the NRSC shared with the NRLC general polling information about Senate races, the kind of information the NRSC shared publicly with the press and with contributor groups to which it gave briefings. In turn, Curcio testified that the NRLC shared with the NRSC information about local newspaper polls the NRLC had access to through its state affiliates. Curcio at 102-108.

Carol Long described the early 1994 meeting in much the same way as Curcio did, characterizing it as a "getting acquainted" meeting. Long added that the NRLC also talked about how it operated and about its general purposes, but she could not recall the specific information shared on these topics. Long at 110-113. Neither Long nor Curcio recalled particular Senate races discussed.

NRLC Executive Director David O'Steen also testified that there were meetings between NRLC and NRSC in 1994, including one with Curcio, but he could not recall specific meetings or how many occurred. O'Steen recalled discussing NRLC's desire for

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<sup>53</sup> Both Curcio and Long believed the meeting probably occurred before June 1994, although Curcio testified that the meeting took place after many of the 1994 primaries had been held. This suggests the meeting may have been as late as June because only 6 of the 34 states holding Senate elections had held primaries before June. The meeting participants were Curcio and Bill Harris, NRSC's then Executive Director, for the NRSC, and, for the NRLC, Long, Executive Director David O'Steen and Associate Executive Director Darla St. Martin.

contributions during these meetings, as well as general discussions about the advantages of a candidate being pro-life, similar to the discussions the groups had in 1992.

According to O'Steen, at times in such meetings he would share data concerning past elections showing the success of pro-life candidates. David O'Steen Deposition at 106-107 and 32. In an affidavit submitted before his deposition, O'Steen averred that the substance of 1994 meetings with the NRSC was the NRLC's desire to raise funds for all of its general purposes, "including building NRLC's base of support, adding to our list of identified *pro-lifers*, publishing candidate surveys and non-partisan voter guides and non-partisan GOTV efforts."

Former NRSC Deputy Executive Director David Carney also testified that O'Steen attend NRSC's PAC briefings where they would have talked about Senate races specifically, although he stated he didn't think he ever spoke to O'Steen personally about any particular race. Carney at 177-178.

Carney also corroborated one NRSC contact with O'Steen during which contributions to NRLC's GOTV program were discussed. Carney testified that O'Steen approached the NRSC, probably in early October 1994, for contributions to the NRLC's planned nationwide GOTV effort. Carney believed that O'Steen may have first broached the subject with Harris, who then asked Curcio and Carney to talk to him. Carney stated that his contact with O'Steen was by phone. O'Steen told Carney that the NRLC was going to do voter turnout, told him how well *organized* the NRLC was, and asked for contributions to help the NRLC fund the voter turnout effort. Carney testified that O'Steen talked about a nationwide program and assured him that there wouldn't be any collusion with the NRL PAC. Carney at 197-204. According to Carney, "[h]e was very

up-front about making sure everything was done properly and that they would do all they could to turn out voters." Id. at 203.

According to Carney, he, Harris and Curcio discussed making contributions to the NRLC intermittently in October 1994.<sup>54</sup> According to Carney, there was no question that NRLC's efforts to turn out voters in an off-year election would help the whole Republican ticket. The only issue was whether the NRSC would have the funds available to do so since they were determined not to leave that committee in debt. Carney at 197-198. During this period, Carney testified that he also discussed with the NRSC's in-house counsel the "concept of making contributions early on in October" to the NRLC. Id. at 208-210.

According to Carney, the NRSC concluded close to the dates of the checks that it would have sufficient money to make contributions. Carney at 200. Although Carney was traveling at the time the checks were actually issued in late October and early November, he acknowledged that he knew the NRSC was going to make the contributions and agreed to do it. Carney testified that his understanding was that the NRSC's non-federal payments were to be used to turn out voters, but said that there was no understanding that the money was to be used to turn out voters in specific states.<sup>55</sup>

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<sup>54</sup> Paul Curcio testified that he learned of the 1994 non-federal payments only after the fact. When asked what his involvement was in making the payments, Curcio did not mention any internal NRSC discussions about making them or any discussions he may have had with David O'Steen. Carney acknowledged that he just assumed Curcio spoke to O'Steen, but didn't know for sure if he did.

<sup>55</sup> David O'Steen testified that he "[did] not recollect having an understanding that the money was earmarked for a particular purpose" and added that his understanding was that the money was given because "Right to Life Committee's message conformed to the Republican message" O'Steen at 153. NRLC Associate Executive Director Darla St. Martin first testified that she did not recall if the NRSC payments were for a specific purpose, but later in her deposition testified that she understood the checks to be for the "general purposes of NRLC" because "that's what we always solicit for . . ." St. Martin at 176-179, 193-194.

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Carney at 207-211. Carney also testified that he and O'Steen did not discuss how the NRLC would turn out voters although he acknowledged that he was aware that the NRLC operated phone banks to turn members out to vote, and, in some states, "it's thousands of people." *Id.* at 202-203, 213.

Although Carney testified that he did not discuss with O'Steen the specific states in which the NRLC would conduct its voter turnout, other evidence establishes that the NRSC knew that the NRLC and its state affiliates were planning to make "nonpartisan" GOTV phone calls in Minnesota and Pennsylvania, two states with close U.S. Senate election.

To begin with, NRL PAC Director Carol Long testified that she specifically mentioned needing funds to do voter turnout in Pennsylvania in a phone call to NRSC Executive Director William Harris. Republican Senate candidate Rick Santorum had a strong pro-life record as a House member and had been endorsed by the NRLC's Pennsylvania affiliate, the Pennsylvania Pro-Life Federation ("PPLF").<sup>56</sup> Both Long and Harris testified about the phone call, with Long placing it within the month before the general election. According to Long, PPLF had been hesitant about letting the NRLC use its lists of supporters to conduct GOTV phone calls. Once PPLF agreed to allow the NRLC to do so, Long called potential contributors, including the NRSC, to solicit funds to conduct the calls. Long at 121-123. According to Long, she told Harris that the NRLC needed to raise money to do GOTV phone calls, and she specifically mentioned

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<sup>56</sup> Indeed, Santorum was a keynote speaker at PPLF's state convention on September 30, 1994, shortly after winning the Republican nomination for U.S. Senate.

Pennsylvania to him. She did not recall whether she mentioned Minnesota or other states and stated that she did not remember if she mentioned a particular dollar figure. Id. at 37-38. Long testified further that she made follow-up phone calls to the NRSC after the call to Harris, but didn't remember to whom she spoke. Id. at 117-119. The NRSC sent the non-federal payments after Long's contacts. The cover letters accompanying each of the NRSC non-federal checks were addressed to Carol Long.

William Harris corroborated the fact that Long called him to solicit a contribution, but testified that he did not remember what she said. He could place the timing of the call only within six months of the 1994 general election. Harris at 143-144. Harris testified that he had in mind contributing an amount between \$150,000 to \$200,000 but that he didn't remember specifically why he had decided on that amount. Id. at 155-156. Harris further testified that he gave the NRLC \$175,000 in non-federal funds because the NRLC "generally supported the Republican platform, and [because] their work had generally enhanced the Republican candidate." Id. at 145. Harris also acknowledged that he made the NRSC non-federal payments as a result of Long's solicitation.<sup>57</sup> Id. at 150, 154-155. Although Harris testified he could not recall exactly what Long said in her phone call, he denied that he discussed particular elections with the NRLC. He was aware, however, that the NRLC had conducted "voter education"

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<sup>57</sup> Harris said the reason NRSC sent four checks totaling \$175,00 over several days, instead of a single check, was because he was not willing to make the donation until funds became available "so as not to jeopardize the cash balance of the Committee." He reviewed the daily balance of the non-federal account and considered the NRLC contribution along with other obligations he thought might be incurred. Harris at 155-156.



activities in the past. *Id.* at 143, 146-147. When asked at his deposition what factors he would consider if NRSC was asked for a donation, as a general matter, Harris replied, "I would ask for whatever [information] was necessary to make sure we expended money in accordance with the mission of the committee." Even so, Harris testified that he did not know how NRLC eventually used the \$175,000 given by the NRSC. *Id.* at 158, 176-177.

In addition to Long's phone call advising the NRSC that the NRLC would need funds to conduct voter turnout calls in Pennsylvania, the record shows that the NRSC also knew that the NRLC's Minnesota state affiliate, Minnesota Citizens Concerned for Life ("MCCL") intended to make voter turnout calls among its supporters.

The Minnesota U.S. Senate race was one of about 12 races the NRSC was closely monitoring as the election drew closer, and David Carney testified that he was personally watching the Minnesota race because he believed it was an open seat the NRSC could win. Given the importance of the race, Carney traveled to Minnesota "many, many times" to meet with the Grams campaign as well as with the state party.

Carney further testified that around October 1994, the same time NRSC officials were intermittently discussing whether to make voter turnout payments to the NRLC, he met with representatives from MCCL on one of his trips to Minnesota.<sup>58</sup> Carney testified that he met with two female representatives from MCCL who came to talk him about the

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<sup>58</sup> Although Carney did not recall the exact date of the MCCL meeting, he placed it in October 1994 because he had met with pro-choice supporters of Grams' Republican primary opponent just prior to meeting with MCCL. According to Carney, the pro-choice supporters had come to "sort of make peace" and left the restaurant just as the MCCL representatives arrived. *Carney* at 178, 183. Based on this information, the MCCL meeting likely took place sometime after the September 13 Minnesota primary. MCCL provided corroboration of a meeting with Carney, but stated in its response to Commission interrogatories that the meeting was in the summer of 1994 and concerned Rod Grams' position on pro-life issues and answers to MCCL's candidate questionnaire.

Senate race "and what was going on." Carney at 178-179. The meeting occurred in a restaurant next to the Grams' campaign office in Anoka, Minnesota. As Carney described it, during the meeting one of the MCCL representatives told him that MCCL was going to try to turn out their membership for the general election. She spent most of her time telling him about MCCL, how well organized they were, how they were going to do all they could to get their members to vote, and how they would get their supporters to call everyone to turn out the vote. Carney at 178-184. However, Carney noted that the woman "obviously had talked to her lawyer," because she kept saying she could not tell him anything "specific" or where they were calling. *Id.* at 179-180. Although Carney stated that the MCCL representatives "actually never said they really supported Rod [Grams]," Carney admitted that the pro-choice position of Ann Wynia, the Democratic opponent, was well known and thus he "assumed they were supportive." *Id.* at 183-184. Moreover, according to MCCL's own newsletter, *Grams*, a House member at the time, had a 100% pro-life voting record.

Another Minnesota connection to the NRSC's 1994 non-federal payments to the NRLC was, once again, Curt Anderson. In 1994, Anderson was simultaneously working as RNC Midwest Field Representative and as a paid consultant to the NRLC where he primarily gave fundraising advice. The Minnesota Senate race was one of five Senate races assigned to Anderson in his role at the RNC.<sup>59</sup> When asked to identify any large contributions Anderson was responsible for as an NRLC fundraising consultant in 1994, NRLC Executive Director David O'Steen testified that Anderson "bore some

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<sup>59</sup> As RNC's Midwest field director, Anderson also had responsibility for congressional and gubernatorial races in his assigned states.

responsibility" for the NRSC's 1994 non-federal payments to NRLC. He also stated that he recalled that Anderson "had been urging contributions to us." O'Steen at 158-160.

Anderson, on the other hand, testified that he did not recall having any involvement in the 1994 NRSC non-federal payments, although he acknowledged that he may have solicited contributions from the NRSC. Anderson testified that he did recall generally urging the NRLC to solicit contributions from the NRSC, and that he knew that some contributions were made, but he stated, "I don't recall the size, the scope or timing or anything like that." Anderson at 221 and generally, Anderson at 216-221.

Two additional sets of facts tend to corroborate the conclusion that the NRSC not only knew the NRLC would use its funds for voter turnout generally, but knew the funds would likely be used for turnout in specific states with key Senate elections. The first involves Senator Phil Gramm's post-general election comments to the Washington Post about the specific purpose of the NRSC payments to NRLC. The second is the apparent use of the funds by the NRLC.

In published remarks he made at a luncheon with Washington Post reporters and editors in February 1995, former NRSC Chairman Phil Gramm candidly admitted the intent and purpose of the NRSC's 1994 non-federal payments to NRLC. According to the Washington Post, Gramm stated, "I made a decision . . . to provide some money to help activate pro-life voters in some key states where they would be pivotal in the election." (emphasis added). Ruth Marcus, *GOP Donation Aided Right to Life Group*, The Washington Post, February 12, 1995, at A27. He went on to remark that the NRSC

had been particularly concerned about Senate elections in Minnesota and Pennsylvania, stating:

... the Minnesota race turned on us in the last 20 days and I made a decision that we were on the verge of losing that race. Pennsylvania turned on us . . . And the focus of this expenditure was trying to get into those states where we thought it made a difference."

Id. at A29.

Despite this public admission, Senator Gramm later contacted the Post reporter and indicated that his original statement was incorrect. According to Gramm's retraction, the funds were given to the NRLC not for any particular purpose, but because the NRLC's "message conformed to the Republican message." Id. at A27. Later, in an affidavit attached to the NRSC's response to the allegations in this matter, Senator Gramm essentially repeated his retraction to the Post, stating that after the luncheon he "had an opportunity to review the facts and check the NRSC's records"<sup>60</sup> and "realized that [his] off-the-cuff comments about NRSC's donations to the National Right to Life Committee had been incorrect." Phil Gramm Affidavit dated April 5, 1995, Paragraph 4 submitted as part of NRSC's April 6, 1995 response to the amended complaint in this matter). Gramm's affidavit then referred back to his statement to the Post reporter that the donations were made because the NRLC's message "conformed to the Republicans message," and "not to influence any particular election." Id.

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<sup>60</sup> Senator Gramm's affidavit does not address the particular facts or records he checked to determine that his statements regarding the targeting of the NRSC's non-federal payments were in error. Gramm apparently did not contact any of the three former NRSC employees who had signatory authority over NRSC expenditures -- Paul Curcio, David Carney or Bill Harris -- before retracting his statement to the Post. Indeed Bill Harris, who authorized the payments and testified that he was the one who decided to make the non-federal payments to NRLC, stated that he phoned Gramm *after* reading the Post article. Harris testified that he told Gramm he thought Gramm's comments were in error because the contributions were not made to "aid specifically a campaign." Harris at 161.

Notwithstanding Gramm's retraction, the NRSC's own last-minute direct spending lends corroboration to Gramm's initial statement that he wanted to activate voters in the Minnesota and Pennsylvania Senate elections where he felt the races were turning against the NRSC. The NRSC's disclosure reports show transfers of \$30,000 and \$55,000 in federal funds to the Minnesota and Pennsylvania state parties, respectively, during the same five day-period as the non-federal transfers to the NRLC. These transfers were the only significant NRSC federal transfers to state parties in the week before the general election.<sup>61</sup> According to Carney, the state parties were handling much of the GOTV activity for those elections (Carney at 194), and state laws in both Minnesota and Pennsylvania prohibited the use of corporate funds in state elections. Thus, the federal transfers to the state parties represented the only way the NRSC could assist voter turnout efforts in those states through the state parties. Moreover, the NRSC had expended most of the full coordinated party expenditure limits for the two races on television ads.<sup>62</sup>

#### **b. NRLC Expenditures**

The movement of funds by the NRLC into voter turnout efforts in Minnesota and Pennsylvania immediately after its receipt of the NRSC payments also supports the

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<sup>61</sup> The NRSC reported only one other transfer during the week before the general election, a \$5,000 transfer described as a contribution to the Washington State Republican Party.

<sup>62</sup> The federal transfers to Minnesota and Pennsylvania and appeared to have strained NRSC's federal fund balance because, as of the end of the post-general election period on November 26, 1994, NRSC's federal account contained only \$142,207.

conclusion that the NRSC's non-federal payments to the NRLC were for state-specific voter turnout programs. Coinciding with its receipt of the \$175,000 in nonfederal payments from the NRSC, the NRLC made significant expenditures for GOTV phone banks. Three of the these larger NRLC expenditures were made to conduct GOTV phone bank efforts in six states with Senate elections, including Pennsylvania and Minnesota.

With regard to Minnesota, the NRLC first sent a \$50,000 check dated November 3, 1994, to Optima Direct, Inc. Records from Optima indicate that the check was treated as a deposit on a GOTV phone bank that Optima conducted for MCCL in Minnesota. The MCCL phone bank included both "non-partisan" and express advocacy GOTV calls, and all calls referenced the Minnesota Senate race. Second, NRLC sent a \$50,000 check dated November 4, 1994, directly to MCCL. An internal NRLC check request form completed by Carol Long indicated that the check was for "special projects -- phone calls." David O'Steen testified that he recalled "some discussion" that at least a portion of the check to MCCL would be used for nonpartisan phone calls. O'Steen at 132. All told, the record indicates that the direct costs for the Minnesota GOTV phone calls conducted by Optima, totaled \$61,277.28.<sup>63</sup>

With regard to Pennsylvania, the NRLC sent another check to Optima dated November 4, 1994 for \$95,000. Records from Optima indicate that this check served as a deposit on a large GOTV phone bank project that Optima conducted directly for the

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<sup>63</sup> After applying the first \$50,000 check from NRLC, dated November 3, as a deposit toward the MCCL GOTV program, Optima billed MCCL directly for the outstanding balance of \$11,277.28. MCCL paid the balance the accounts of its state and federal political committees, Minnesota Citizens Concerned for Life Committee for State Pro-Life candidates and MCCL PAC, respectively. The record indicates that MCCL deposited the second \$50,000 NRLC check, dated November 4, into its general fund. From this fund, MCCL made payments to various MCCL staff and consultants, some of who worked on or had knowledge of the GOTV phone banks and independent expenditures made by MCCL.

NRLC. These GOTV phone calls were conducted in ten states and referenced Senate elections in five states, including Pennsylvania.<sup>64</sup> According to Carol Long's testimony, Pennsylvania was added to the NRLC's "non-partisan" GOTV program only after she had prepared scripts for the other states because of the delay in getting the lists from PPLF. Long at 103-107, 128. According to Optima's invoice, \$46,212.50 of the total charged NRLC for the GOTV program was attributable to the Pennsylvania GOTV phone calls. The direct costs for all NRLC-financed Pennsylvania GOTV calls, conducted by Optima and two other vendors chosen by PPLF, totaled \$63,544.20.<sup>65</sup>

All of the Minnesota and Pennsylvania GOTV phone calls conducted for MCCL and the NRLC referenced the Senate elections in those states. The Minnesota phone bank included both non-partisan and express advocacy phone calls. All calls were made using lists provided by NRLC's Minnesota and Pennsylvania state affiliates, MCCL and PPLF, respectively. All told, the amount paid directly to vendors for the Minnesota and Pennsylvania GOTV phone banks was \$124,821.48.

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<sup>64</sup> Some of the states in which Optima conducted GOTV calls directly for NRLC involved only Congressional and/or gubernatorial elections. The five Senate elections referenced in these "non-partisan" GOTV phone banks were: Pennsylvania, Virginia, Oklahoma, Nebraska and two races in Tennessee.

<sup>65</sup> These costs do not include costs of any labor associated with script preparation or list gathering or any list development or list rental costs.

The scripts used for the Minnesota "non-partisan" GOTV phone calls, and at least some of the Pennsylvania Senate GOTV phone calls were almost identical.<sup>66</sup> See "1994 General Election - MCCL GOTV Script" (Doc. No. 600035) and "Script for Pennsylvania Senate Race" (Doc. No. 200250). Each of these scripts began with the caller asking to speak to a specific person or to "your mother and father." The caller then stated, "I'm calling to remind you to vote on Tuesday in the U.S. Senate election. There are now 4,300 abortions a day, and each abortion takes the life of a living human child." The script then stated that the named Democratic candidate, "supports abortion on demand." In the case of Minnesota's Ann Wynia, a second sentence stated that she "supports using your tax dollars for abortion" Next, the script stated that the named Republican candidate "opposes abortion on demand" and "opposes using your tax dollars to pay for abortion." The script closed with the sentence, "Your vote is important. Please vote on Tuesday. Thank you."

The Minnesota GOTV phone bank also included express advocacy GOTV calls. The scripts used for those calls were targeted to a Congressional and several state legislative districts. See e.g., "General Election 1994 - MCCL GOTV Script, Senate, CD 1, LD 25A" (Doc. No. 650090). Each of the scripts asked voters to vote for Rod Grams for Senate and for either Gil Gutknecht, the Republican candidate for Congress in

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<sup>66</sup> Two versions of a script were produced for the Pennsylvania GOTV calls. The second script varied only slightly in that it referenced the Republican candidate by name but referenced the Democratic candidate only as "his opponent." It also opened with a sentence stating that the caller was calling "for the Pennsylvania Pro-Life Federation" and ended with the added statement, "God bless you and thank you for your support." However, a notation on the version of the script discussed in the text above stated that the "calls [were] made by Optima Direct, MDS and Omega Communications." It is possible that PPLF provided its own script to the vendors it selected -- MDS and Omega -- and that the NRLC used the script discussed in the text for the Optima calls since it is identical to the other GOTV scripts NRLC provided that vendor.



Congressional District 6 or a state legislative candidate or both. As in the non-partisan script, each named candidate was characterized as either supporting various pro-life positions or supporting various "pro-abortion" positions.

The Minnesota and Pennsylvania GOTV calls were apparently targeted to pro-life supporters because the lists used to make the calls were owned by MCCL and PPLF. Moreover, information obtained in the investigation indicates that MCCL operated a voter identification program that identified pro-life supporters and even asked respondents to identify the political party with which the respondent most often agreed. The targeting of even "non-partisan" GOTV messages to pro-life supporters that link Republican candidates to pro-life positions and Democratic candidates to pro-choice positions was clearly intended to turn out voters favoring the named Republican pro-life candidate. The express advocacy phone calls, by definition, were explicitly intended to turn out voters supporting Republican candidates for Senate and Congress.

Although there is no evidence that anyone at the NRSC had knowledge of the actual scripts used in the NRLC-financed phone banks, NRLC Executive Director David O'Steen testified that it was generally known that NRLC conducted "nonpartisan" GOTV phone calls and the NRSC acknowledged as much in its response to the Commission's interrogatories. 10/16/95 NRSC Response to Commission Subpoena at 7. See also Harris at 146-148 and Carney at 212-213. In elections with a choice between clearly pro-life and pro-choice candidates such as the Minnesota and Pennsylvania Senate races, voter turnout aimed at pro-life supporters would benefit the pro-life candidate.

c. Summary of Evidence for 1994 Payments to NRLC

The foregoing evidence shows that the NRSC made \$175,000 in non-federal payments to the NRLC in October and November 1994 to conduct voter turnout activities aimed at voters likely to support Republican candidates for the 1994 general election. David Carney in his deposition testimony and Senator Gramm in his published statements to the Washington Post admit that NRSC's payments were for voter turnout. Moreover, as Paul Curcio generally acknowledged in his deposition testimony, the NRSC believed that the turnout of pro-life supporters generally benefited Republican candidates. Also, since NRLC officials wanted to leave the NRSC's federal account debt free at the end of the 1994 election cycle, the NRLC had an incentive for giving non-federal funds to another entity to conduct GOTV activities rather than conducting such activities itself which would have required use of at least 65% in federal funds.

Additionally, there is also evidence that the NRSC knew that the NRLC and its Minnesota state affiliate intended to conduct GOTV phone calls in certain states with close Senate elections, namely Minnesota and Pennsylvania. NRL PAC Director Carol Long testified that she specifically asked NRSC Executive Director Bill Harris for funds so that NRLC could make voter turnout calls in Pennsylvania where the Republican Senate was pro-life and the Democratic candidate was not. Moreover, through a meeting with representatives from NRLC's Minnesota state affiliate, David Carney knew that the NRLC's Minnesota state affiliate, MCCL, was planning to do all it could to turn out voters in Minnesota where the NRSC Senate candidate was strongly pro-life and the Democratic candidate was strongly pro-choice.

Thus, the record shows the NRSC gave \$175,000 in non-federal funds to the NRLC with knowledge that the NRLC and its state affiliate planned to turnout pro-life voters in specific states where turnout of such voters would benefit Republican Senate candidates. Had the NRLC financed such voter turnout activity itself, at least 65% of the costs of its activity would have had to be financed with federal funds. No federal funds were used.

### **III. CONCLUSION**

The preceding evidence must be viewed within the context that the NRSC's essential function is to elect Republican candidates to the U.S. Senate. As the above discussion overwhelming demonstrates, the NRSC's non-federal payments to the NRLC, ADF and CFA over a period of two election cycles were consistent with this function. At a minimum, the non-federal payments from NRSC's non-federal account were made with knowledge that the funds would be used for voter turnout activities in elections that included federal candidates. Had the NRSC financed these activities itself, it would have had to use a minimum of 65% in federal funds. Further, in the case of the 1993 U.S. Senate special and runoff elections in Texas, the NRSC gave non-federal funds to the non-profit groups with specific knowledge that they would be used for voter turnout aimed at voters sympathetic to Republican candidates in an exclusively federal election.

The Act and Commission regulations prohibit the use of corporate and union funds in federal elections and set limits on contributions made to influence federal elections. Only funds meeting the requirements of the Act can be placed in federal accounts and can be used to influence federal elections. Committees which have established separate federal and non-federal accounts, such as the NRSC, must make all

disbursements, expenditures and transfers in connection with any Federal election from their Federal account. 11 C.F.R. § 102.5(a)(1)(i).

As stated above, Commission regulations and the interpretation of the Act and Commission regulations through Advisory Opinions, require party committees like the NRSC to allocate the costs of generic GOTV activity and so-called "issue ads" between their federal and non-federal accounts, with a minimum of 65% of these costs being allocable to the committee's federal account. The NRSC was also required to pay the full federal portion of allocable activity from its federal account, with subsequent reimbursement from its non-federal account for the non-federal share. Expending too large a percentage from a non-federal account results in violations of the Act's limitations and prohibitions at 2 U.S.C. §§ 441a(f) and 441b(a) because the NRSC's non-federal accounts contained contributions which were excessive under federal law and contributions from corporations or labor organizations. Failure to make all the initial payments from federal accounts results in violations of 11 C.F.R. §§ 102.5 and 106.5(g)(1)(i).

The allocation rules at Section 106.5 are premised on the understanding that covered activity generally encompasses both federal and non-federal elections. To the extent that such activity is conducted only in connection with federal elections, the full costs for the activity must be paid only from funds subject to the Act's prohibitions and limitations (*i.e.*, hard dollars). In this present matter, such a situation applied to the 1993 Texas special and special runoff elections for U.S. Senate.

Therefore, the Office of the General Counsel recommends that the Commission find probable cause to believe the NRSC and Stan Huckaby, as treasurer, violated

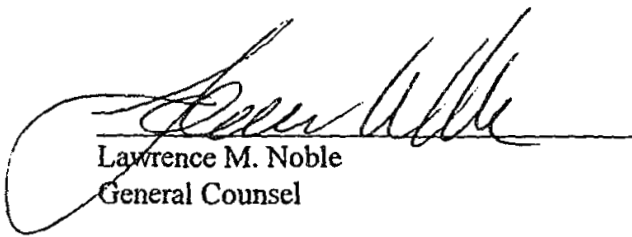
2 U.S.C. §§ 441a(f) and 441b(a) by using prohibited and excessive funds to finance federal election activity, 11 C.F.R. § 106.5(c) by failing to allocate its payments for joint federal and non-federal activities between its federal and non-federal account, and 11 C.F.R. §§ 102.5(a)(1)(i) and 106.5(g)(1)(i) by failing to make all payments in connection with federal elections from its federal account, including payments of allocable activities.

#### IV. GENERAL COUNSEL'S RECOMMENDATIONS

1. Find probable cause to believe that the National Republican Senatorial Committee and Stan Huckaby, as treasurer, violated 2 U.S.C. §§ 441b(a) and 441a(f) and 11 C.F.R. §§ 102.5(a)(1)(i), 106.5(c) and 106.5(g)(1)(i).

Date

7/30/99

  
Lawrence M. Noble  
General Counsel